REPORTS

OF

Cases Argued and Determined

IN THE

COURT of CLAIMS

OF THE

STATE OF ILLINOIS

VOLUME 20

Containing cases in which opinions were filed and orders of dismissal entered, without opinion, between July 1, 1950 and June 30, 1951

SPRINGFIELD, ILLINOIS

1951

[Printed by authority of the State of Illinois.]

(52024)

PREFACE

The opinions of the Court of Claims herein reported are published by authority of the provisions of Section 18 of an Act entitled "An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an **Act** herein named," approved July **17,** 1945.

EDWARD J. BARRETT,
Secretary of State and
Ex Officio Clerk of the
Court of Claims.

OFFICERS OF THE COURT

JUDGES

FRED P. SCHUMAN, ***Chief justice***
Granite City, Illinois

ROBERT L. LANSDEN, *Judge*
Cairo, Illinois

F. DONALD DELANEY, ***judge***
Joliet, Illinois

IVAN A. ELLIOTT, ***Attorney General***

EDWARD J. BARRETT,
Secretary of ***State and Ex-Officio Clerk of the Court***

JOSEPH A. LONDRIGAN, ***Deputy Clerk***
Springfield, Illinois

RULES OF THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

Adopted pursuant to "An Act to create the Court of Claims, to prescribe its powers-and duties, and to repeal an Act herein named." (Approved July 17, 1945. L. 1945, p. 660.)

TERMS OF COURT

Rule I. The Court shall hold a regular session at the Capital of the State on the second Tuesday of January, May and November of each year, and such special sessions at such places as it deems necessary to expedite the business of the Court.

PLEADINGS

Rule 2. Pleadings and practice at common law as modified by the Civil Practice Act of Illinois shall be followed except as is herein otherwise provided.

Rule 3. The original and five copies of all pleadings shall be filed with the Clerk and the original shall be provided with a suitable cover, bearing the title of the Court and cause, together with a proper designation of the pleading printed or plainly written thereon.

Rule 4. (a) Cases shall be commenced by a verified complaint which shall be filed with the Clerk of the Court. A party filing a case shall be designated as the claimant and the State of Illinois shall be designated as the respondent. The Clerk will note on the complaint and each copy the date of filing and deliver one of said copies to the Attorney General.

(b) Only a licensed attorney and an attorney of record in said case will be permitted to appear for or on behalf of any claimant, but a claimant, although not a licensed attorney, may prosecute his own claim in person. All appearances, including substitution of attorneys, shall be in writing and filed in the case.

(c) The complaint shall be printed or typewritten and shall be captioned substantially as follows:

IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

A. B., Claimant
vs.
STATE OF ILLINOIS, Respondent
No.

Kule 5. (a) The claimant shall state whether or not his claim has been presented to any State department or officer thereof, or to any person, corporation or tribunal, and if so presented, he shall state when, to whom, and what action was taken thereon.

(b) The claimant shall in all cases set forth fully in his petition the claim, the action thereon, if any, on behalf of the State, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of the claim or any part thereof or interest therein has been made, except as stated in the petition; that the claimant is justly entitled to the amount therein claimed from the State of Illinois, after allowing all just credits; and that claimant believes the facts stated in the petition to be true.

(c) If the claimant bases his complaint upon a contract or other instrument in writing **a** copy thereof shall be attached thereto for reference.

Rule 6. (a) A bill of particulars, stating in detail each item and the amount claimed on account thereof, shall be attached to the complaint in all cases.

(b) Where the claim arises under the Workmen's Compensation Act or the Occupational Diseases Act, the claimant shall set forth in the complaint all payments, both of compensation and salary, which have been received by him or by others on his behalf since the date of the injury; and he shall also set forth in separate items the amount incurred, and the amount paid for medical, surgical and hospital attention on account of his injury, and the portion thereof, if any, which was furnished or paid for by the respondent.

Rule 7. . If the claimant be an executor, administrator, guardian or other representative appointed by a judicial tribunal, a duly

authenticated copy of the record of appointment must be filed with the complaint.

Rule 8. If the claimant die pending the suit the death may be suggested on the record, and the legal representative, on filing a duly authenticated copy of the record of appointment as executor or administrator, may be admitted to prosecute the suit by special leave of the Court. It is the duty of the claimant's attorney to suggest the death of the claimant when that fact first becomes known to him.

Rule 9. Where any claim has been referred to the Court by the Governor or either House of the General Assembly, any party interested therein may file a verified complaint at any time prior to the next regular session of the Court. If no such person files a complaint, as aforesaid, the Court may determine the case upon whatever evidence it shall have before it, and if no evidence has been presented in support of such claim, the case may be stricken from the docket with or without leave to reinstate, in the discretion of the Court.

Rule 10. A claimant desiring to amend his complaint, or to introduce new parties may do so at any time before he has closed his testimony, without special leave, by filing five copies of an amended complaint, but any such amendment or the right to introduce new parties shall be subject to the objection of the respondent. made before or at final hearing. Any amendments made subsequent to the time the claimant has closed his testimony must be by leave of Court.

Rule 11. The respondent shall answer within thirty days after the filing of the complaint, and the claimant shall reply within fifteen days after the filing of said answer, unless the time for pleading be extended; provided, that if the respondent shall fail so to answer, a general traverse or denial of the facts set forth in the complaint shall be considered as filed.

EVIDENCE

Rule 12. At the next succeeding term of Court after a case is at issue, the Court, upon call of the docket, shall set the same for hearing.

Rule 13. All evidence shall be taken in writing in the manner in which depositions in chancery are usually taken. All evi-

dence when taken and completed by either party shall be filed with the Clerk on or before the first day of the next succeeding regular session of the Court.

Rule 14. All costs and expenses of taking evidence on behalf of the claimant shall be borne by the claimant, and the costs and expenses of taking evidence on behalf of the respondent shall be borne by the respondent, except in cases arising under the Workmen's Compensation and Occupational Diseases Acts.

Rule 15. If either party fails to file the evidence as herein required, the Court 'may, in its discretion, proceed with its determination of the case.

Rule 16. All records and files maintained in the regular course of business by any State department, commission, board or agency of the respondent and all departmental reports made by any officer thereof relating to any matter or case pending before the Court shall be prima facie evidence of the facts set forth therein: provided, a copy thereof shall have been first duly mailed or delivered by the Attorney General to the claimant or his attorney of record.

ABSTRACTS AND BRIEFS

Rule 17. The claimant in all cases where the transcript of evidence exceeds twenty five pages in number shall furnish a complete typewritten or printed abstract of the evidence, referring to the .pages of the transcript by numerals on the margin of the abstract. The evidence should be condensed in narrative form in the abstract so as to present clearly and concisely its substance. The abstract must be sufficient to present fully all material facts contained in the transcript and it will be taken to be accurate and sufficient for a full understanding of such facts, unless 'the respondent shall file a further abstract, making necessary corrections or additions.

Rule 18. When the transcript of evidence does not exceed twenty-five pages in number the claimant may file the original and five copies of such transcript in lieu of typewritten or printed abstracts of the evidence; otherwise the original and five copies of an abstract of the evidence shall be filed with the Clerk. 'The original shall be provided with a suitable cover, bearing ,the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon.

Rule 19. Each party may file with the Clerk the original and five copies of a typewritten or printed brief setting forth the points of law upon which reliance is had, with reference made to the authorities sustaining their contentions. Accompanying such briefs there may be a statement of the facts and an argument in support of such briefs. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon. Either party may waive the filing of his brief and argument by filing with the Clerk a written notice and five copies to that effect.

Rule 20. The abstract, brief and argument of the claimant must be filed with the Clerk on or before thirty days after all evidence has been completed and filed with the Clerk, unless the time for filing the same is extended by the Court or one of the Judges thereof. The respondent shall file its brief and argument not later than thirty days after the filing of the brief and argument of the claimant, unless the time for filing the brief of claimant has been extended, in which case the respondent shall have a similar extension of time within which to file its brief. Upon good cause shown further time to file abstract, brief and argument or a reply brief of either party may be granted by the Court or by any Judge thereof.

Rule 21. If either party shall fail to file either abstracts or briefs within the time prescribed by the rules, the Court may proceed with its determination of the case.

EXTENSION OF TIME.

Rule 22. Either party, upon notice to the other party, may make application to this Court, or any Judge thereof, for an extension of time for the filing of pleadings, abstracts or briefs.

MOTIONS

Rule 23. Each party shall file with the Clerk the original and five copies of all motions presented. The original shall be provided with a suitable cover, bearing the title of the Court and case, together with the name and address of the attorney filing the same printed or plainly written thereon.

Rule 24. In case a motion to dismiss is denied, the respondent shall plead within thirty days thereafter, and if a motion to

dismiss be sustained, the claimant shall have thirty days thereafter within which to file petition for leave to amend his complaint.

ORAL **ARGUMENTS**

Rule **25.** Either party desiring to make oral argument shall file a notice of his intention to do so with the Clerk at least ten days before the session of the Court at which he wishes to make such argument.

REHEARINGS

Rule 26. A party desiring a rehearing in any case shall, within thirty days after the filing of the opinion, file with the Clerk the original and five copies of his petition for rehearing. The petition shall state briefly the points supposed to have been overlooked or misapprehended by the Court, with proper reference to the particular portion of the original brief relied upon, and with authorities and suggestions concisely stated in support of the points. Any petition violating this rule will be stricken.

Rule 27. When a rehearing is granted, the original briefs of the parties and the petition for rehearing, answer and reply thereto shall stand as files in the case on rehearing. The opposite party shall have twenty days from the granting of the rehearing to answer the petition, and the petitioner shall have ten days thereafter within which to file his reply. Neither the claimant nor the respondent shall be permitted to file more than one application or petition for a rehearing.

Kule 28. When a decision is rendered against a claimant, the Court, within thirty days thereafter, may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

RECORDS AND CALENDAR

Rule 29. (a) The Clerk shall record all orders of the Court, including the final disposition of cases. He shall keep a docket in which he shall enter all claims filed, together with their number, date of filing, the name of claimants, their attorneys of record and respective addresses. As papers are received by the Clerk, in course, he shall stamp the filing date thereon and forthwith mail to opposing counsel a copy of all orders entered, pleadings, motions,

notices and briefs as filed; such mailing shall constitute due notice and service thereof.

(b) Within ten days prior to the first day of each session of the Court, the Clerk shall prepare a calendar of the cases set for hearing, and of the cases to be disposed of at such session, and deliver a copy thereof to each of the Judges and to the Attorney General.

Rule 30. Whenever on peremptory call of the docket any case appears in which no positive action has been taken, and no attempt made in good faith to obtain a decision or hearing of the same, the Court may, on its own motion, enter an order therein ruling the claimant to show cause on or before the first day of the nest succeeding regular session why such case should not be dismissed for want of prosecution and stricken from the docket. Upon the claimant's failure to take some affirmative action to discharge or comply with said rule, prior to the first day of the next regular session after the entry of such order, such case may be dismissed and stricken from the docket with or without leave to reinstate on good cause shown. On application and a proper showing made by the claimant the Court may, in its discretion, grant an extension of time under such rule to show cause. The fact that any case has been continued or leave given to amend, or that any motion or matter has not been ruled upon will not alone be sufficient to defeat the operation of this rule. The Court may, during the second day of any regular session, call its docket for the purpose of disposing of cases under this rule.

FEES AND COSTS

Rule 31. The following schedule of fees shall apply:

Filing of complaint (except cases under the Workmen's Compensation Act and the Occupational Diseases Act) ... $10.00

Certified copies of opinions:

Five pages or less	$ 0.25
For more than five pages and not more than ten pages	0.35
For more than ten pages and not more than twenty pages	0.45
For more than twenty pages	0.50

Rule 32. Every claim cognizable by the Court and not otherwise sooner barred by law,* shall be forever barred from prosecution therein unless it is filed with the Clerk of the Court within two years after it first accrues, saving to infants, idiots, lunatics, insane persons and persons under other disability at the time the claim accrues two years from the time the disability ceases.

ORDER OF THE COURT

The above and foregoing rules were adopted as the rules of the Court of Claims of the State of-Illinois on the 11th day of September, A. D. 1945, to be in full force and effect from and after the first day of November, A. D. 1945.

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* See limitation provisions of specific statutes, including Workmen's Compensation and Occupational Diseases Acts.

COURT OF CLAIMS LAW

AN ACT ***to create the Court of Claims, to prescribe its powers and duties, and to repeal an*** Act ***herein named.***

Section 1. The Court of Claims, hereinafter called the Court, is created. It shall consist of three Judges, to be appointed by the Governor by and with the advice and consent of the Senate, one of whom shall be appointed Chief Justice. In case of vacancy in such office during the recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall nominate some person to fill such office. If the Senate is not in session at the time this Act takes effect, the Governor shall make temporary appointments as in case of vacancy.

Section 2. The term of office of each Judge first appointed pursuant to this Act shall commence July 1, 1945 and shall continue until the third Monday in January, 1949, and until a successor is appointed and qualified. After, the expiration of the terms of the Judges first appointed pursuant to this Act, their respective successors shall hold office for a term of four years from the third Monday in January of the year 1949 and each fourth year thereafter and until their respective successors are appointed and qualified.

Section 3. Before entering upon the duties of his office, each Judge shall take and subscribe the constitutional oath of office and shall file it with the Secretary of State.

Section 4. Each Judge shall receive a salary of $4,000.00 dollars per annum payable in equal monthly installments.

Section 5. The Court shall have a seal with such device as it may order.

Section. 6. The Court shall hold a regular session at the Capital of the State beginning on the second Tuesday of January, May and November, and such special sessions at such places as it deems necessary to expedite the business of the Court.

Section 7. The Court shall record its acts and proceedings. The Secretary of State, ex-officio, shall be Clerk of the Court, but may appoint a deputy, who shall be an officer of the Court,

to act in his stead. The deputy shall take an oath to discharge his duties faithfully and shall be subject to the direction of the Court in the performance thereof.

The Secretary of State shall provide the Court with a suitable court room, chambers and such office space as is necessary and proper for the transaction of its business.

Section 8. The Court shall have jurisdiction to hear and determine the following matters:

A. All claims against the State founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency.

B. All claims against the State founded upon any contract entered into with the State of Illinois.

C. 'All claims against the State for damages in cases sounding in tort, in respect of which claims the claimants would be entitled to redress against the State of Illinois, at law or in chancery, if the State were suable, and all claims sounding in tort against The Board of Trustees of the University of Illinois; provided, that an award for damages in a case sounding in tort shall not exceed the sum of $2,500.00 to or for the benefit of any claimant. The defense that the State or The Board of Trustees of the University of Illinois is not liable for the negligence of its officers, agents, and employees in the course of their employment shall not be applicable to the hearing and determination of such claims.

D. All claims against the State for personal injuries or death arising out of and in the course of the employment of any State employee and all claims against The Board of Trustees of the University of Illinois for personal injuries or 'death suffered in the course of, and arising out of the employment by The Board of Trustees of the University of Illinois of any employee of the University, the determination of which shall be in accordance with the substantive provisions of the Workmen's Compensation Act or the Workmen's Occupational Diseases Act, as the case may be.

E. All claims for recoupment made by the State of Illinois against any claimant.

Section 9. The Court may:

A. Establish mles for its government and for the regulation of practice therein; appoint commissioners **to** assist

the Court in such manner as it directs and discharge them at will; and exercise such powers as are necessary to carry into effect the powers herein granted.

B. Issue subpoenas to require the attendance of witnesses for the purpose of testifying before it, or before any Judge of the Court, or before any notary public, or any of its commissioners, and to require the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it. In case any person refuses to comply with any subpoena issued in the name of the Chief Justice, or one of the Judges, attested by the Clerk, with the seal of the Court attached, and served upon the person named therein as a summons at common law is served, the circuit court of the proper county, on application of the Clerk of the Court, shall compel obedience by attachment proceedings, as for contempt, as in a case of a disobedience of the requirements of a subpoena from such Court on a refusal to testify therein.

Section 10. The judges,, commissioners and the clerk of the Court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of them.

Section 11. The claimant shall in all cases set forth fully in his petition the claim, the action thereon, if any, on behalf of the State, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of the claim or any part thereof or interest therein has been made, except as stated in the petition; that the claimant is justly entitled to the amount therein claimed from the State of Illinois, after allowing all just credits; and that claimant believes the facts stated in the petition to be true. The petition shall be verified, as to statements of facts, by the affidavit of the claimant, his agent, or attorney.

Section 12. The Court may direct any claimant to appear, upon reasonable notice, before it or one of its Judges or commissioners or before a notary and be examined on oath or affirmation concerning any matter pertaining to his claim. The examination shall be reduced to writing and be filed with the Clerk of the Court and remain as a part of the evidence in the case. If any claimant, after being so directed and notified, fails to appear or refuses to testify or answer fully as to any material

matter within his knowledge, the Court may order that the case be not heard or determined until he has complied fully with the direction of the Court.

Section 13. Any Judge or commissioner of the Court may sit at any place within the State to take evidence in any case in the Court.

Section 14. Whenever any fraud against the State of Illinois is practiced or atternptd by any claimant in the proof, statement, establishment, or allowance of any claim or of any part of any claim, the claim or part thereof shall be forever barred from prosecution in the Court.

Section 15. When a decision is rendered against a claimant, the Court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

Section **16.** Concurrence of two Judges is necessary to the decision of any case.

Section 17. Any final determination against the claimant on any claim prosecuted as provided in this Act shall forever bar any further claim in the Court arising out of the rejected claim.

Section 18. The Court shall file with its clerk a written opinion in each case upon final disposition thereof. All opinions shall be compiled and published annually by the Clerk of the Court.

Section 19. The Attorney General, or his assistants under his direction, shall appear for the defense and protection of the interests of the State of Illinois in all cases filed in the Court, and may make claim for recoupment by the State.

Section 20. At evexy regular session of the General Assembly, the Clerk of the Court shall transmit to the General Assembly a complete statement of all decisions in favor of claimants rendered by the Court (during the preceding two years, stating the amounts thereof, the persons in whose favor they were rendered, and a synopsis of the nature of the claims upon which they were based. At the end of every term of Court, the Clerk shall transmit a copy of its decisions to the Governor, to the

Attorney General, to the head of the office in which the claim arose, to the State Treasurer, to the Auditor of Public Accounts,. and to such other officers as the Court directs.

Section 21. The Court is authorized to impose, by uniform rules, a fee of $10.00 for the filing of a petition in any case; and to charge and collect for each certified copy of its opinions a fee of twenty-five cents for five pages or less, thirty-five cents for more than five pages and not more than ten pages, forty-five cents for more than ten pages and not more than twenty pages, and fifty cents for more than twenty pages. All fees and charges so collected shall be forthwith paid into the State Treasury.

Section 22. Every claim cognizable by the Court and not otherwise sooner barred by law shall be forever barred from prosecution therein unless it is filed with the Clerk of the Court within two years after it first accrues, saving to infants, idiots, lunatics, insane persons and persons under other disability at the time the claim accrues two years from the time the disability ceases.

Section. 23. It is the policy of the General Assembly to make no appropriation to pay any claim against the State, cognizable by the Court, unless an award therefor has been made by the Court.

Section 24. "An Act to create the Court of Claims and to prescribe its powers and duties," approved June 25, 1917, as amended, is repealed. All claims pending in the Court of Claims created by the above Act shall be heard and determined by the Court created by this Act in accordance with this Act. All of the records and property of the Court of Claims created by the Act herein repealed shall be turned over as soon as possible to the Court created by this Act.

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CASES ARGUED AND DETERMINED IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

(No, 4095—Claim denied.)

STEPHEN MEGO, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September **23,** *1949.*

Petition of Claimant for Rehearing denied September 19, 1950.

HANSON AND DOYLE, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; ARCHIE T. BERNSTEIN, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award based on a fire-existing disease being aggravated by an injury will be denied.* Where claimant, employed as an attendant at the Chicago State Hospital, was attacked by a patient and suffered slight lacerations of his face, and later the sight of his left eye was found to be failing, the Court denied his claim for aggravation of a previous existing disease under the Act; Court stated that the burden is upon claimant to establish by a preponderance of the evidence his right to compensation, and to show that the pre-existing disease was aggravated or accelerated in the course of his employment by accidental means. The right to compensation cannot be based upon speculation, surmise or conjecture. In looking at this case, Court was unable to conclude that the claimant had proved that the accident sustained by him had aggravated or accelerated his previous condition with reference to his eye.

SCHUMAN, C. J.

On August 1,1947, claimant, Stephen Mego, 71 years of age, was in the employ of the respondent as a night attendant at the Chicago State Hospital, Chicago, Illinois, going to work at 11:00 P.M. in the evening. He was the sole attendant for about 100 patients in Ward No. DW-2. His duties were to take the temperature, pulse and respiration of sick patients, report fights, care for the untidy patients in the washroom, and awaken, wash and dress the patients for breakfast. About 5:30 in the morning of August 1, 1947, he was attacked by a patient of about **30** years old, who jumped on him from behind.

His assailant grabbed his necktie, and threw him to the floor. The necktie broke in half. The patient beat the head of Mr. Mego, and claimant received a few scratches. Claimant's glasses, lens and frame were smashed. Claimant was taken to the hospital for X-Rays; and the few scratches on his face were treated with mercurochrome; and he was then discharged. There was no direct injury to his eyes.

Dr. Poslusny, an optometrist, who had previously fitted claimant with glasses, testified that he examined claimant on August **2, 1947,** the date after the attack, at which time his vision was the same as before; that he came back in two weeks and the eyes were the same; and that he came back on October **7, 1947** and the retina and the vitries were involved, and he sent him to the doctor, who had operated on him for the removal of cataracts ; that on October **7, 1947** vision in the right eye was 20/200, and his left eye 20/50.

Claimant found after obtaining his new glasses that he. could no longer read a newspaper or see at a distance, whereas prior to the attack he could distinguish **a** traffic light four blocks distant. Claimant went to the Illinois Eye and Ear Infirmary, and he obtained no relief there, in fact, his vision continued to grow worse. He was later recommended to the Civil Service Protective Association. Finally, on June 9, **1948,** he obtained the services of Dr. Richard **A.** Perritt, his present oculist. Dr. Perritt prescribed various medicines and treatment. As a result, claimant's vision improved to a point where he can count fingers held before him at a distance of four feet, although his right eye remains with an uncorrected vision of less than 20/200, and his left eye remains with **a** vision of 20/200, any vision of 20/200 unaided and without glasses being considered industrial blindness.

It was stipulated that claimant was injured on August 1, 1947, while in the course of his employment by the respondent; that his salary was $1,740.00 annually, and in excess of $30.00 per week; that he was not married, and had no children under sixteen years of age; and that claimant had made no assignment or transfer of the present claim or any part thereof. It mas further stipulated that claimant is and has been working for the respondent in the same capacity and at the same wages since the date of the accident, and that he lost no time or wages from his said employment by reason of the accident. It was further stipulated that claimant paid $185.00 for medical services; $49.15 for medicines; $35.00 for glasses, and, is continuing to pay the sum of $10.00 per week to Dr. Richard Perritt' for medical care and treatment.

Dr. Louis Olsman, physician and surgeon on the staff of the Chicago State Hospital for the past ten years, except for four years service in the U. S. Army Medical Corps, testified he treated employees of the hospital under the employee's health service of which he had charge. He first treated claimant in 1939 for weakness of the left arm, leg and side of the face; the diagnosis was hemiparesis and hypertensive heart condition. Claimant's condition improved, and he was returned to duty. In 1940 Mr. Mego was again hospitalized for the same condition, together with dizziness and temporary loss of ability to speak. This latter condition was diagnosed as hemiplegia, transitory with hypertension. Dr. Olsman, due to absence from the hospital for military service, did not. see claimant again until March 4, 1947, when Mr. Mego complained of symptoms of weakness, shortness 'of breath, and pain over his heart. Examination revealed, in addition to his previous findings of high blood pres-

sure and hypertensive heart disease, that he had retinal hemorrhages in both eyes. The diagnosis was hypertensive heart disease with coronary sclerosis and hypertensive retinopathy. The patient recovered sufficiently to return to his duties. He was again hospitalized on March 4, 1947, and at that time his symptoms were those of weakness, shortness of breath, and pain over heart; and the examination revealed high blood pressure and hypertensive heart disease, the presence of retinal hemorrhages in both eyes; and the diagnosis at the time showed hypertensive heart disease with coronary sclerosis and hypertensive retinopathy; However, on July **22,** 1947, about a week before the assault, he was again admitted to the hospital complaining of dizziness and weakness. The diagnosis again was hypertensive heart disease. His blood pressure was two hundred over one hundred and twenty. On September 7, 1948 the claimant was again admitted to the employee's hospital with symptoms of pain of the heart, blood pressure 170/90, and had findings of auricular fibrilation, irregular heartbeat ; and the diagnosis at that time was again that of hypertensive heart disease of coronary sclerosis. In addition to the foregoing periods of hospitalization, Dr. Olsman stated he treated Mr. Mego from time to time on an out-patient basis. During these latter examinations claimant's blood pressure varied from one hundred and eighty over one hundred to two hundred and ten over one hundred and twenty. Dr. Olsman added that on January **13,** 1947, a board of three doctors, including himself, examined claimant finding him to have arteriosclerosis and hardening of the arteries. It was recommended that he be given an assignment to quiet service and light work where he would have constant supervision. Dr. Olsman stated claimant's work in Ward DW-2 on the evening he was

attacked was heavier and more strenuous work than had been advised for him. In this ward the patients are of the deteriorated, untidy and vegetative types, who have no control over their bodily functions or eliminations, and are chronically untidy.

Dr. Olsman attended Mr. Mego, after aforesaid attack on August 1, 1947. He stated Mr. Mego suffered superficial lacerations on the side of his nose and right cheek, and a contusion to his left elbow. However, there was no evidence of injury to the eye proper.

Dr. Maurice D. Pearlman, chief resident physician in the Department of Ophthalmology at the Illinois Eye and Ear Infirmary, testified on behalf of the respondent. He stated that according to hospital records claimant was first treated at the Infirmary on March 22,1941, and had cataracts removed from both eyes. Dr. Pearlman examined Mr. Mego's eyes on December 16, 1948, and found:

"My examination showed that the right eye had the vision of finger counting at about one to two feet. The eye was white, normal in external appearance, and the cornea showed a faint superficial density just off the center of the cornea. The anterial chamber was clear and deep. The iris was normal except for a surgical coloboma at the twelve o'clock position, and the lens was absent. The vitreous seemed to be fluid, and contained several large floating opacities. The retina and the choroid showed extensive degenerative changes in most portions. There were several small scattered hemorrhages present on the right eye. The optic nerve seemed atrophic. It was my conclusion the right eye was suffering the late degenerative changes due to severe myopia. The left eye had a corrected vision of twenty over one hundred which was not improvable. The left eye findings were very similar to that of the right eye. . . . Several small retinal hemorrhages were seen in the macular area in the left eye. It was my impression that the left eye had severe myopic retinopathy."

Dr. Pearlman further testified that if there was no direct trauma to the eye, but merely superficial cuts and breaking of glasses, it would be unlikely to result in retinal hemorrhages; that upon reviewing the record of

the claimant he believed that the left eye shows the same vision on October 3, 1947 as it showed on January 22, 1942, namely 20/100, and that with such vision he could only read the headlines of a newspaper.

On cross-examination, Dr. Pearlman testified that the claimant's condition from which he was suffering pertaining to his eyes was a degenerative process, and that that meant he was getting progressively worse; that his examination on December 16, 1948 compared with the report in the records as of April, 1942—there was no change in the vision of the left eye; that the hemorrhages that he noted on December 16, 1948 in the left eye were scattered about the macular area, which is the central portion of the retina, and would affect vision, but that claimant's vision was still 20/100; that from the examination on October 3, 1947 there was no hemorrhages reported, although they might have been present, because the hemorrhages reported were quite small. That hemorrhages, such as the ones he saw on December 16, frequently absorb and disappear, and if the hemorrhages were absorbed, the vision would be corrected; that hemorrhages to the retina, in order of frequency, are caused by diabetes, hypertension, arteriosclerosis, blood dyscrasis, myopic degeneration and other fundus degenerations, senility per se, septicemia, tumors of the eye, retinal detachments, glaucoma, and trauma; that retinal hemorrhages can be caused by psychic trauma with the presence of hypertension and arteriosclerosis; that the claimant attained his vision of 20/100 in his left eye in September of 1941, and that the claimant at that time had myopic choroiditis, which condition is an irreversible situation; that hemorrhages could occur in such a condition; that if hemorrhages were responsible for the vision of 20/100 and if the retina was otherwise in good

shape, the vision could improve; that the claimant was suffering from severe diseases with reference to his eyes; that he had severe myopia and also hypertension, and that myopia could cause hemorrhages, and hypertension could cause hemorrhages, and senility could cause hemorrhages, and his conclusion was that the claimant's eyes were the result of compound causes; that trauma could aggravate hypertension and cause a hemorrhage; that the hemorrhages that he found on December 16, **1948** could not have existed in a more extensive form, because he could have detected evidence of absorption of a previous larger hemorrhage; and that in his opinion the claimant's condition found on December 16, **1948** was stationary, and that if claimant's hypertension would drop for one reason or the other the hemorrhage might disappear; that it was his opinion that a man should have a vision of at least 20/40 to read a newspaper without a magnifying glass.

The opinion of Dr. Pearlman was that the claimant had the same vision in his left eye after the attack as he had before.

Dr. Perritt testified that he examined the claimant on June **9, 1948,** and that his examination revealed that in the right eye the acuity was finger vision at approximately one foot; that in the left eye uncorrected the visual acuity was 20/200, correctible to 20/100 with glasses that he was wearing; that the fundus examination of both eyes revealed myopic changes of the disk, or the optic nerve. On page 118 of the record he stated that no hemorrhages or exudates were seen in the left eye. That similar myopic changes were found in the disk, the macula, and in the paramacular area, which is the center portion of the eyeball. That he gave him treatments, which treatments were to prevent the reformation

of further hemorrhages; that 20/200 is considered industrial blindness, and that in his opinion claimant was industrially blind in both eyes; that from said hypothetical question propounded to him, with taking into consideration the previous condition of the claimant, and the attack as testified to, that in his opinion the attack could have caused the hemorrhages seen in the left eye in the macula and paramacular area; that the hemorrhages which he examined and saw could produce a diminution in vision in the left eye; that in his opinion the hemorrhages were brought about in the claimant because of his age, with hypertension, and because of the trauma, and that the vision in his left eye was reduced as a result of said causes to 20/200; that the trauma could have produced the hemorrhages; that the hemorrhages could have been caused by hypertension, alone, without trauma; that the claimant by having vision in October of 20/40 and 20/50 in the left eye that said vision was increased by the hemorrhages clearing up; that in his opinion the hemorrhages found in his examination were new hemorrhages, and that he couldn't say whether they were related to the August 1, 1947 accident or not, but that they were new hemorrhages; that new hemorrhages are distinct in that, first of all, the color is different in a new hemorrhage; secondly, in an old hemorrhage you have secondary scar tissue formation formed after the absorption of the hemorrhage, because you see little white areas, which are evidences of scar tissue formation with the absorption of old hemorrhages; that he could see scar tissues in the eye from old hemorrhages; and the condition that he found with reference to the type of eyes that they would continue to deteriorate and not improve;,that in the case of myopia, per se, if he has degenerative changes, he would not be able to

read a newspaper; that in his opinion from the condition found he was led to the opinion that all of the conditions found including the attack were factors playing a direct role in the final reduced acuity of the left eye.

It is significant that no claim was made for the loss of the sight of the right eye arising out of the attack when the record shows that Dr. Poslusny stated that the right eye had been improved to 20/60 after the cataract operation, and the left eye improved to 20/40; that three months later the same visibility occurred; that on August 2, 1947 when he examined claimant, that the vision of both eyes were the same, and it was not until October 7, 1947 that his examination disclosed that the vision in his right eye was 20/200, and the vision in his left eye 20/50. It is apparent that a deterioration or loss of vision had definitely occurred to the right eye, and was back to the same visibility as after the cataract operation. However, claimant makes no contention that this loss of vision or deterioration in the right eye was caused as a result of the attack.

From the medical testimony in this record it is apparent that there is a difference of opinion with reference to the cause of the reduced vision of the claimant. It seems that the entire record is devoted to the condition of the left eye, and that no testimony has been directed to the condition of the right eye with reference to how the attack affected it, although vision was definitely worse than that of the left eye.

All of the doctors agree that myopia, per se, and hypertension with heart disease would cause hemorrhages in the eyes; that the claimant's eyes were in a degenerative process as a result of the above named thing, and that the conditions could have resulted in the things without trauma.

It appears to the Court that the burden is upon claimant to establish by a preponderance of the evidence his right to compensation, to show where the claimant has a pre-existing disease, that that disease is aggravated or accelerated in the course of the employment by accidental means. (*MacLeod* v. *State of Illinois,* 17 Court of Claims, page 167 at 170 and 171.) The right to compensation could not be based upon speculation, surmise or conjecture.

Viewing the record as liberally as possible so as to accord to the claimant every benefit under the Workmen's Compensation Act, we are unable to conclude that claimant has proven that the accident sustained by him on August 1,1947 aggravated or accelerated his previous condition with reference to his eyes. From Dr. Perritt's own testimony, it can be readily deducted that the examination made by him on June 9, 1948 was predicated upon hemorrhages that were new, and could not have been hemorrhages on August 1, 1947. This is borne out by the fact that Dr. Pearlman testified that when he examined claimant on October 3, 1947 that no hemorrhages were reported.

For the reasons above stated, the award in this case is denied.

The testimony on hearing before Commissioner Young was taken and transcribed by A. M. Rothbart, who has submitted a statement of $195.40 for his services. This charge is reasonable and proper.

An award is made in favor of A. M. Rothbart for stenographic services in the amount of $195.40, which is payable forthwith.

Claim of Stephen Mego is denied.

This award is made subject to the approval of the Governor, as provided in Section 3 of "An Act concern-

ing the payment of compensation awards to State employees."

(No. 4192—Claimant awarded $2,556.83.)

JOHN E. BARRY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July 7, 1950.

ROBERT F. HAILS, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—failure to plead recoupment as a counterclaim in answer to claimant's complaint will preclude the respondent from recovering said amount from claimant. Where claimant was employed by the Secretary of State as an automobile license investigator, and was in an accident while on duty, and sustained a fracture of his hip joint and also the right ankle, and during the subsequent layoff he continued to receive full salary, and it was found that he was overpaid $734.71, and then he files a claim for only his medical bills and nothing for temporary total disability, it was held that unless the respondent specifically pleads in its answer the fact of said recoupment by way of a counterclaim, no order can be entered by the Court to recover for the respondent the overpayment to claimant. Thus the Court, acting pursuant to Section 15 of the Act, stated that claimant is entitled to an award to cover the medical expenses, and said award will not be diminished by the amount that the claimant was overpaid by the respondent.

LANSDEN, J.

On October 28, 1948, claimant, John E. Barry, was injured in an accident that arose out of and in the course of his employment as an automobile license investigator for the Secretary of State. He now proceeds under the Workmen's Compensation Act.

On the day in question, while on duty and driving an automobile furnished by respondent, claimant struck a steel pole in the center of Ogden Avenue near Albany Avenue in Chicago.

Claimant sustained severe injuries including an unusual fracture of the cup of his left hip joint, a Potts

fracture of the right ankle, and head lacerations.

Emergency treatment was given at the Hospital of St. Anthony de Padua, Chicago, and, the day after the accident, claimant was removed to St. Joseph's Hospital, Joliet, where he remained until February 9, 1949. Claimant returned to work on March 1, 1949, but was again hospitalized for plastic surgery from March 5 to March 12, 1949, at Silver Cross Hospital, Joliet. He returned to work on March 19, 1949. From November 8 to November 10, 1949, claimant was again hospitalized at Grant Hospital, Chicago, for plastic surgery.

No jurisdictional questions are involved.

During all of the time claimant was off work he was paid his full salary of $250.00 per month. His salary in November, 1949 was $275.00 per month.

Claimant was a single man, aged 30, with no dependents. His earnings in the year prior to the accident amounted to $3,000.00, and his rate of compensation for temporary total disability should have been $19.50 per week. He was thus overpaid for temporary total disability from the day after his accident through February 28, 1949, or 17 4/7 weeks, 2 1/7 weeks in March, 1949, and 3/7 week in November, 1949, or a grand total of 20 1/7 weeks. His compensation amounted to $392.79, but he was paid $1,127.50, or an overpayment of $734.71.

However, claimant does not seek in this action any recovery for total temporary disability, partial permanent disability, or specific loss of use of his legs. All he asks is for respondent to pay his doctor and hospital bills, all of which were authorized by his superiors, and none of which have been paid. That respondent is responsible for the payment of such bills, subject to Section 15 of the Workmen's Compensation Act, is conceded, since all such services were required to cure or relieve

claimant from the effects of his accidental injury. Sec. 8 (a) Workmen's Compensation Act. This responsibility is independent of any overpayment to claimant.

Therefore, we are unable to understand why respondent failed to claim recoupment against claimant for the overpayment of $734.71. In *Batley* v. *State*, No. 4246, opinion filed May 9, 1950, we held recaupment could not be granted unless specifically pleaded by respondent as a counterclaim. We follow that case, and hold herein that no order can be entered in favor of respondent to recover the overpayment of temporary total disability to claimant.

Passing to the doctor, ambulance and hospital bills, under Section 15 of the Workmen's Compensation Act, the reasonableness of any such charges is subject to the control of the Industrial Commission. This Court acts, as the Industrial Commission for State employees, and we have the same powers and duties.

Except for some personal phone calls which were charged on claimant's hospital bill at St. Joseph's Hospital, Joliet, which we find amounted to $32.07, no question can be raised about the reasonableness of any charges except those of Dr. George H. Brannon, Manhattan, Illinois.

Dr. Brannon submitted an unitemized bill for $1,521.00. He testified at the hearing as to such charges. In his report to this Court, Commissioner Wise stated that in his opinion the charges of Dr. Brannon were grossly excessive.

However, Dr. Brannon did attend claimant every day he was in St. Joseph's Hospital. He stated his charges were $5.00 per visit. Extra services for putting claimant in traction amounted to $50.00. In addition, Dr. Brannon made several calls per day during a time

that claimant was ill in the hospital from pneumonia. Dr. Brannon also performed one plastic surgery operation.

An eminent consultant, Dr. James J. Callahan, assisted Dr. Brannon in treating claimant's hip cup fracture, and his charges of $100.00 were included in Dr. Brannon's bill. That the services of both doctors were skillful to a high degree is conceded.

However, we find from the record that Dr. Brannon is entitled to only $1,000.00. ,The record discloses that he made, approximately 150 calls on claimant. At $5.00 per call, this amounts to $750.00. He paid Dr. Callahan $100.00. His services for putting claimant in traction amounted to $50.00, and for the plastic surgery operation he is entitled to $100.00.

Julia Hertz, Joliet, Illinois, was employed to take and transcribe the testimony of the two hearings before Commissioner Wise. Her charges amounted to $65.00, which are reasonable, and an award is entered in her favor for such sum.

An award is entered in favor of claimant, John E. Barry, under Section 8 (a) of the Workmen's Compensation Act, for $2,556.83, all of which is payable forthwith as follows :

$ 35.00	to claimant for the use of Hospital of St. Anthony de Padua, 2875 West 19th Street, Chicago, Illinois. (First aid.)
$ 15.00	to claimant for the use of Gerald Dames & Sons, 309 Sherman Street, Joliet, Illinois. (Ambulance service.)
$1,000.00	to claimant for the use of Dr. George H. Brannon, Hoerrmann Hotel Building, Manhattan, Illinois. (Professional services.)
$ 122.33	to claimant for the use of Silver Cross Hospital, Joliet, Illinois. (First plastic surgery hospitalization.)
$1,170.00	to claimant for the use of St. Joseph's Hospital, 372 North Broadway, Joliet, Illinois. (Principal hospitalization.)
$ 150.00	to claimant for the use of Dr. Karl A. Meyer, 30 North Michigan Avenue, Chicago, Illinois. (Professional services, second plastic surgery operation.)

$ 64.50 to claimant for the use of Grant Hospital of Chicago, 551 West Grant Place, Chicago, Illinois. (Second plastic surgery hospitalization.)

Recoupment to respondent is denied for failure to plead same by counterclaim.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4202—Claimant awarded $1,260.73.)

STUART J. ROBSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July 7, 1950.

GIFFIN, WINNING, LINDNER AND NEWKIRK, AND ROBERT F. HAILS, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, employed as a highway maintenance supervisor by the Department of Public Works and Buildings, had an accident in the course of his employment, when the car he was driving went out of control, and as a result fractured his left tibia and fibula in three places, Court held that he was entitled to an award under the Act for a 35 per cent partial loss of use of his left leg.

DELANEY, J.

On February 15, 1948, the claimant, Stuart J. Robson, a highway maintenance supervisor, Department of Public Works and Buildings, was making a tour of his district to examine the condition of the highway, as the vicinity near Springfield had been subjected to freezing rains and snow, and he had instructed his men to clean the highway and spread cinders. Claimant began his duties on that date at approximately 7:30 A.M., and about 5:30 P.M., while completing the inspection tour, claimant was driving southwest on U. S. Route 54, at

a point about one mile east of the Village of Barclay, when he met an unidentified truck approaching from the southeast, which truck struck a patch of ice, and skidded into the opposing line of traffic. Claimant, in order to avoid a head-on collision, drove his car off of the pavement, then struck snow and ice, which caused him to lose control of the car, and he rolled down a 25 foot embankment, which bordered the highway at that point. Claimant was thrown from the car. His left tibia and fibula were fractured in three places, with a dislocation of the ankle joint. Ne was first attended by Dr. Fleischli at St. John's Hospital, Springfield, Illinois, and later, because of the seriousness of the injury, was removed to Barnes Hospital at St. Louis, Missouri, where he was attended by Doctors Key, Reynolds and Ford. He was discharged from the hospital on March 4, 1948.

At the time of the accident, the claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

Claimant's earnings for the year immediately preceding his injury were $2,651.22. At the time of the injury he had no children under sixteen years of age dependent upon him for support. Claimant's compensation rate is, therefore, $19.50 per week. Claimant was paid full salary, in accordance with the Division policy, for total temporary disability resulting from his injury from February 16 to February 22,1948, and compensation at the rate of $19.50 a week from February 23 to June 7, 1948, inclusive. Payments for total temporary disability amounted to $350.81. Salary'payment for 7 days was $55.52, and compensation for 15 weeks and 1 day was $295.29. There

was, therefore, an overpayment for the seven days of $36.02.

Dr. Keys and his associates made the following report on June 29, 1949:

"I wish to advise that Mr. Stuart Robson was again examined on the 25th of June. The patient still walks with a limp, although he is working. He states that there is some pain in the ankle and foot, and that the foot and ankle remain stiff."

"Examination shows the patient to have some enlargement of the ankle. There is dorsiflexion to about right angles and a little limitation of plantor flexion of the foot"

"It is my feeling that this case has now reached a permanent state, and as a result of the injury, which he has received, there is now a permanent partial Impairment, which I should estimate to be in the neighborhood of 30-35 per cent of the leg below the knees."

Claimant is entitled to an award for 35 per cent partial loss of use of his left leg, making a total of 66% weeks at $19.50 per week, or $1,296.75; from this should be deducted the overpayment of $36.02, leaving a balance of $1,260.73.

An award is, therefore, entered in favor of claimant, Stuart J. Robson, in the aggregate amount of $1,260.73, all of which has accrued and is payable forthwith.

The Division also paid doctor and hospital bills of claimant to the extent of $724.42.

Harry L. Livingstone was employed to report the testimony at the hearing before Commissioner Wise, and charged the sum of $49.20 for such services. These charges are fair, reasonable and customary. An award is entered in favor of Harry L. Livingstone in the amount of $49.20, which is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4206—-Claimant awarded $635.58.)

LYNN VAUGHN, Claimant, *vs.* **STATE** OF ILLINOIS, Respondent.

Opinion filed July 7, 1950.

M. J. HANAGAN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award *will be made tinder.* Where claimant, an attendant at the Elgin State Hospital, was injured in the course of his employment when a patient slammed an iron door on his right hand, resulting in a fracture of the fifth metacarpal, Court held that he was entitled to an award under Section 8 (e) of the Act for 20 per cent permanent loss of use of his right hand.

DELANEY, J.

Claimant, Lynn Vaughn, was employed on January 26, 1949, at the Elgin State Hospital, Elgin, Illinois, in the capacity of an attendant. On said date he was supervising patients, who were inmates of said hospital. During the breakfast hour, while supervising the patients going to breakfast, he was holding an iron door open, and a patient, trying to get by the claimant, slammed the iron door on his right hand. A short time later claimant's hand began to swell, and he went to the hospital. His hand was X-Rayed, and the examination disclosed a fracture of the fifth metacarpal. A plaster cast was administered, but hospitalization was not necessary, Dr. L. L. Love testified that he examined the claimant on May 16, 1949, and again on October 4, 1949, and found stiffnessin the fourth and fifth fingers, with flexion almost absent in the fourth and fifth fingers, and partially absent in the first and second fingers of his right hand. Dr. Love further testified that the entire right hand appeared stiff, and that claimant was unable to make a fist. While claimant was recovering from his hand injury he developed a heart condition; however, the evidence does not

disclose any connection between the heart condition and his employment.

No jurisdictional question is raised. Respondent and claimant were operating under the Workmen's Compensation Act., and the accident in question arose out of and in the course of the employment.

The record consists of the complaint, the departmental report, supplemental departmental report, waiver of briefs of respondent and claimant, and transcript of the testimony.

Evidence shows that claimant entered the employment of respondent on December 6, 1948. The evidence further shows that claimant received the following payments as salary from respondent: December, $113.23; January, $135.00; February, $135.00; and March, $4.35, or a total salary of $387.58. The evidence further indicates claimant has a twenty (20) per cent permanent loss of use of his right hand as a result of the accident. For such permanent loss of use of right hand, under Section 8, Paragraph (e) 12, the claimant should receive from the respondent, the compensation rate, $19.50 per week for 34 weeks. Claimant received the sum of $161.13 as salary from January 27 to March 15, 1949, inclusive, a period of 6 6/7 weeks; 6 6/7 weeks at the compensation rate of $19.50 per week amounts to $133.71. Claimant, therefore, received an overpayment of $27.42 for non-productive time.

An award is, therefore, made to claimant, Lynn Vaughn, in the sum of $663.00, less overpayment for non-productive time of $27.42, or the sum of $635.58, all of which has accrued and is payable forthwith..

Vivian Kirk was employed to take and transcribe the evidence at the hearing before Commissioner Summers. Charges in the amount of $20.00 were incurred for these

services, which charges are fair, reasonable and customary. An award is, therefore, entered in favor of Vivian Kirk in the amount of $20.00, payable forthwith.

Henry P. Keefe was also employed to take and transcribe the evidence at a subsequent hearing before Commissioner Summers. Charges in the amount of $9.40 were incurred for these services, which charges are fair, reasonable and customary. An award is, therefore, entered in favor of Henry P. Keefe in the amount of $9.40, payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4210—Claim denied.)

DAVID ORR, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July 7, 1950.

BARTLEY AND KARBER, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be denied under the Act.* Where claimant, employed by the Division of Highways, was injured when a drum of oil, which he was loading onto a truck, fell and struck him in groin, and later he developed a hernia, Court denied him an award; Court stated that claimant's proof was insufficient to meet the requirements of the Act.

SAME—*necessary elements that must be proved in order to be entitled to compensation for a hernia under the Act.* Claimant must prove:

1. The hernia was of recent origin.
2. Its appearance was accompanied by pain.
3. It was immediately preceded by trauma arising out of and in the course of employment.
4. The hernia did not exist prior to the accident.

DELANEY, J.

The claimant, David Orr, was on September 30, 1947, an employee of the respondent in the Division of High-

ways, Department of Public Works and Buildings. On that day, while loading a drum of oil onto a truck, in the course of his employment for the respondent, his foot slipped into a depression, causing the balk of the weight of the oil drum to fall upon the claimant. He immediately felt a burning sensation in his left groin, and a few days later a lump appeared. Claimant was later examined by Dr. John S. Lewis, who found him to be suffering from a left inguinal hernia. On May 26, 1948, claimant entered the Holden Hospital, Carbondale, Illinois, and the hernia condition was repaired by Dr. Lewis. Claimant was discharged from the hospital June 8,1948, and was declared by Dr. Lewis to be able to work on July 6,1948.

The claimant at the time of the injury had no children under the age of sixteen years. He was totally disabled from May 25, 1948 to June 3, 1948, inclusive. He was paid full salary from May 25, 1948 to June 3, 1948, arid compensation at the rate of $19.50 per week from June 4, 1948 to July 5, 1948, inclusive. Claimant's earnings in the year preceding his injury totalled $2,613.00.

The record consists of the complaint, motion of respondent to dismiss, notice to call up motion to dismiss, withdrawal of Clyde L. Flynn, Jr., as counsel, entry of appearance of Messrs. Bartley and Karber, amended complaint, departmental report and transcript of evidence.

The original complaint was filed on July 7, 1949, and it is the contention of respondent that the cause of action is barred under the one year Statute of Limitations as contained in Section 24 of the Workmen's Compensation Act (Chapter 48, Section 161, Ill. Rev. Statutes 1947), as appeared upon the face of the original complaint.

in 1948, was not paid until August 7, 1948, and the evidence bears out this fact. Therefore, we feel the Court has jurisdiction in this cause. Respondent furnished complete surgical, medical and hospital treatment. Respondent and claimant were operating udder the Workmen's Compensation Act, and the accident in question arose out of and in the course of the employment.

There is no testimony in the record that claimant has been completely and permanently disabled. Dr. John S. Lewis testified to the question, "Doctor, at the time you performed this operation, could you determine whether or not the hernia was of recent origin?" Answer, "No, as a matter of fact, in our experience with hernias, the instance and occurrence of hernia due to direct violence has never or hardly ever occurs. They occur by a slow, progressive weakening of fascia and muscles, and the trauma that finally produces the hernia may not be more than the patient has received on many previous occasions. For example, they are similar to the blow out of a tire. The tire may bulge for a long time while driving over streets. Finally, there is a blow out for the same reason. A blow out is when the inner tube protrudes through the casing of the tire. The difference of the hernia is when the viscus or internal organ protrudes through the wall containing it, meaning the Viscus."

Section 8 (d-1), Workmen's Compensation Act, requires that an injured employee, to be entitled to compensation for hernia, must prove :

1. The hernia was of recent origin.
2. Its appearance was accompanied by pain.
3. It was immediately preceded by trauma arising out of and in the course of employment.
4. The hernia did not exist prior to the accident.

Prom the testimony of Dr. Lewis, claimant's proof was insufficient to meet the requirements of the Workmen's Compensation .Act.

An award will have to be denied.

Virginia O'Leary was employed to take and transcribe the evidence at the hearing before Commissioner Summers. Charges in the amount of $28.00 were incurred for these services, which charges are fair, reasonable and customary.

An award is, therefore, entered in favor of Virginia O'Leary in the amount of $28.00.

This award is subject to the approval of the Governor as provided in Section *3* of "An Act concerning the payment of compensation awards to State employees.',

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(No. 4220—Claimant awarded $263.25.)

HARVE CARTER, Claimant, *vs.* **STATE** OF ILLINOIS, Respondent.

Opinion *filed July 7, 1950.*

R. W. HARRIS, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an *award* will *be made under.* Where claimant, employed as a guard at the Illinois Security Hospital by the Department of Public Welfare, fell on stairway while counting inmates and injured his right ankle, Court held that claimant was entitled to an award under the Act for a 10 per cent permanent partial loss of use of his right foot.

DELANEY, J.

Claimant was employed by the Department of Public Welfare at the Illinois Security Hospital as a guard with earnings of $2,640.00 in the year preceding his injury.

Claimant injured his right ankle on November 19, 1948, as the result of a fall on the steps of a metal stairway, while making a count of the inmates. He slipped off of the top step, and fell down four or five steps. X-Ray pictures taken by Dr. May showed no broken bones. Dr.

Alonao N. Baker testified that he examined claimant on January 15, **1949,** and found considerable swelling over the outside bones of claimant's right ankle, and that the ankle was quite tender on pressure. On October 8, **1949,** Dr. Baker again examined claimant, and found the same swelling condition of the right ankle. Dr. Baker further testified that the ligaments that hold the tip of the tibia in position to keep it from moving back and forth were torn loose, causing this smelling, and that at claimant's age of 66 this condition would become permanent.

Claimant at the time of the injury was 66 years of age. He did not take any time off, and was paid full wages for his services by the respondent until he terminated his employment on February 28, **1949.** From the medical testimony of Dr. Alonzo N. Baker and the personal **ex**amination of claimant's ankle by Commissioner Summers of the Court of Claims, we are of the opinion that the claimant has suffered a **10** per cent permanent partial loss of use of his right foot caused by the injury to his right ankle.

The record consists of the complaint, departmental report and the transcript of evidence.

No jurisdictional questions were raised.

An award is, therefore, entered in favor of claimant for a 10 per cent permanent partial loss of use of his right foot for which he is entitled to be paid 13½ weeks at the compensation rate of **$19.50** per week, being the maximum of $15.00 increased **30** per cent, the injury having occurred subsequent to July **1, 1947,** amounting to the sum of **$263.25,** all of which has accrued and is payable forthwith.

Gray Brewer was employed to take and transcribe the testimony at the hearing before the Commissioner, for which he made a charge of **$58.06.** We find this sum

reasonable, customary and fair for the services rendered. An award is hereby entered in favor of Gray Brewer in the sum of $58.06.

These awards are subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees. „?

(No. 4243—Claimants awarded $934.72.)

MICHAEL S. GAYDOS AND THE KANSAS CITY FIRE AND MARINE INSURANCE COMPANY, A MISSOURI CORPORATION, Claimants, vs. **STATE OF ILLINOIS,** Respondent.

Opinion filed July 7, 1950.

JAMES H. MANNS AND WALTER J. SIMHAUSER, Attorneys for Claimants.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

NEGLIGENCE—where award for ***damages will be allowed for.*** Where an auto-truck operated by an employee of the Department of Public Works and Buildings negligently collides with an automobile owned by claimant, the claimants are entitled to damages. Court held that Section 8 (C) of the Court of Claims Act rendered the respondent liable.

SAME—when Section 23 (d) of the Uniform Traffic Act ***does not apply.*** Where an auto-truck, owned by the State of Illinois, and being driven to a point where highway was under repair, negligently collides with another automobile, the Court held that Section 23 (d) of the Uniform Traffic Act, Chapter 95½, Paragraph 120, is not a defense, as to qualify under this provision. The State vehicle must be shown to be actually in use in work upon the surface of the highway, and in this case it was not.

DELANEY, J.

The claimants, Michael S. Gaydos and the Kansas City Fire and Marine Insurance Company, a Missouri Corporation, filed their complaint herein on November 15, **1949,** seeking to recover damages sustained in an accident, which occurred on November 5, 1948, between a passenger car driven by Michael S. Gaydos, and a truck

of the Division of Highways of the Department of Public Works and Buildings of the State of Illinois. The claimants ask $934.72 for damages to the automobile; $500.00 for loss of business and profits, as a result of the loss of use of the automobile; $69.00 for damages to clothing, and $3.30 for six dozen eggs destroyed. The evidence discloses that Michael S. Gaydos was the owner of a **1948** Hudson Sedan, which he used in his business as a drug salesman, and that on November 5, 1948, at approximately 3:30 P.M. he was driving same in a northerly direciion on U. S. Route No. 66 at a point approximately five miles scuth of the City of Springfield, Illinois, which point was also about a mile north of the bridge across Lake Springfield. The highway in this area is a two-lane paved highway, twenty-two feet wide. On the day in question the Division of Highways was making repairs, and the west lane of the highway was blocked. As the claimant proceeded in a northerly direction, he followed the said truck driven by William Sands for approximately two miles, and during this period cf time there was a Ford car between the State truck and claimant's automobile. Claimant was about fifty (50) yards behind the truck, and about thirty (30) yards behind the Ford. As they neared the end of the barricaded area the claimant was driving about thirty to thirty-five miles per hour, and, after passing the last barricade, the Ford proceeded to pass the State truck, at which time the State truck was near the center lane of the pavement, and it was necessary for tlie Ford to pull the left wheels off on the left shoulder. The claimant, Michael S. Gaydos, also proceeded to pass the truck, and as he neared the truck he sounded his horn, but the truck 'driver, without giving any signal or warning, made a left turn toward a small roadway on the west side of the highway. Claimant came

to a stop with the rear of his car about five feet off on the west shoulder, and then his car was struck on the right side by the left front side of the truck. William Sands, driver of the State truck, testified that he was placing flares along the highway, and he had intended going north, and then turning around to proceed back south. He looked in his rear view mirror, and saw the Ford approaching, but did not see the claimant's automobile. The record shows contradictory testimony that William Sands had given a hand signal, and, also, that he admitted it was his fault.

The record consists of the complaint, transcript of evidence, abstract of evidence, claimant's waiver of brief, supplemental abstract of evidence, statement, brief and argument of respondent, and reply brief of claimant.

The respondent claims that by Section 23 (d) of the Uniform Traffic Act (Ill. Rev. Stat. 1947, Chapter 95½, Paragraph 120)

> "(d) The provisions of this Act shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of the highway, but shall apply to such persons and vehicles when travelling to or from such work."

the respondent is exempt from any liability. The claimants on the other hand claim the respondent is liable in tort cases as provided by Section 8c of the Court of Claims Act.

> "All claims against the State for damages in cases sounding in tort, in respect of which claims the claimants would be entitled to redress against the State of Illinois at law or in chancery, if the State were suable, etc."

In the case of *Mower, et al,* v. *Williams*, decided January 19, 1949, where the defendant operating a State owned truck with snow plow, entered an intersection without looking in the direction from which plaintiff's automobile was coming, relying on a helper's statement that it was safe to proceed, the Court held that a highway

"maintenance man" who was in charge of helper and equipment was engaged in a "governmental" rather than a "ministerial" function in moving snow and ice from highways, and was not liable for mere defects in judgment in carrying out his duties. The Court further said that in recognition of the necessity for freedom of action on the part of persons charged with the maintenance of highways, the Legislature has removed by Section 23 **(d)** of the Uniform Traffic Act, certain requirements which are by law required of the general public.

The Court feels, however, that in this case, the respondent does not come within Section **23** (d) of the Uniform Traffic Act, because the truck operated by *William Sands was not *"actually engaged in* **work** *upon the surface of the highway"* at the time of the accident. The Court also feels that, the driver of the State truck was negligent in failing to give a proper signal, and in failing to keep a proper lookout for cars, and that his negligence was the cause of the accident, and the claimant was free from contributory negligence. We are of the opinion that the respondent is liable for damages as provided by Section 8c of the Court of Claims Act.

The claimant's car was repaired by the Capital City Motors, Inc., in the amount of $934.72, and of this amount $50.00 was paid by claimant, Michael S. Gaydos, and $884.72 by the claimant, the Kansas City Fire and Marine Insurance Company, a Missouri Corporation. Claimant, Michael S. Gaydos, claims a loss of $69.00 for damages to a top coat and trousers, and the six dozen eggs, which was not proven by the evidence. We are also of the opinion that claimant, Michael S. Gaydos, has not proven by the evidence a loss of business and profits as a result of loss of use of his automobile, and that this part of the claim should be denied. This conclusion is based upon a

referral to claimant's Exhibit 3, in which there does not appear to be any substantial difference in his sales for the months of November and December, 1948, when compared with the same period during 1947, and other months during the year 1948.

An award is, therefore, entered in favor of claimant, Michael S. Gaydos, in the amount of $50.00, and an award is also entered in favor of claimant, Kansas City Fire and Marine Insurance Company, a Missouri Corporation, in the amount of $884.72.

(No. 4251—Claimant awarded $6,000.00.)

ISABEL V. SHEPARD, WIDOW, ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed *July 7*, 1950.

JOHN S. HUBER, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where an assistant traffic engineer for the Department of Public Works and Buildings, while in the course of his employment supervising the erection and location of direction and detour signs, was hit by a semi-trailer and died as a result, the Court held his widow was entitled to recover under Section 7 (a) of the Act.

DELANEY, J.

Claimant, Isabel V. Shepard, is the widow of Pardon S. Shepard, deceased, who was employed on November 10, 1949, in the capacity of an assistant district traffic engineer for the respondent, Department of Public Works and Buildings, Division of Highways. On that day, deceased was supervising the location and erection of direction and detour signs. His regular hours of employment were from 8:30 A.M. to 5:00 P.M. At approximately 3:30

P.M. he had reached a point of about one mile southeast of the Village of Hamel, Illinois. At that time and place a semi-trailer truck owned by Jahneke Brothers of Joliet, Illinois, and driven by Robert Dewar of Plainfield, Illinois, was approaching: from the southwest in its proper traffic lane. As the two vehicles approached a common point, the automobile driven by the deceased, and owned by the respondent, veered to the left across the center line of the highway, and struck the semi-trailer. The deceased, Pardon S. Shepard, received injuries as a result of this collision which caused instantaneous death, according to the report of the Coroner of Madison County.

Deceased was 51 years of age at the time of his death, and was survived by his widow, the claimant herein. He had no children under the age of 16 years dependent upon him for support. His earnings in the year preceding his injury and death totalled **$4,358.33.** His weekly compensation rate, therefore, would be $15.00. The death having occurred subsequent to July 18, 1949, this must be increased 50 per cent, making a compensation rate of $22.50 per week.

Upon consideration of this case, the Court finds it has jurisdiction of the parties hereto and the subject matter; that the injury which resulted in the death of Mr. Shepard arose out of and in the course of his employment; that the respondent had proper notice of the accident and death of Mr. Shepard; and the application for claim was filed in proper time as provided under Section **24** of the Workmen's Compensation Act, as amended.

The record consists of the complaint, departmental report, transcript of evidence and abstract of the evidence.

Claimant is, therefore, entitled to an award under

Section 7 (a) of the Workmen's Compensation Act in the amount of $4,000.00, which must be increased 50 per cent, making a total award of $6,000.00.

An award is, therefore, made in favor of the claimant, Isabel V. Shepard, in the amount of $6,000.00, to be paid as follows:

$ 765.00, which has accrued and is payable forthwith;
$5,235.00, which is payable in weekly installments of $22.50 per week, beginning July 14, 1950, for a period of 232 **weeks;** with an additional final payment of $15.00.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

An award is also entered in favor of Rollin Moore for stenographic services in the sum of $45.75, which is payable forthwith. The Court finds that the amount charged is fair, reasonable and customary, and said claim is allowed.

This award is subject to the approval of the Governor as provided in Section *3* of "An Act concerning the payment of compensation awards to State employees."

(No. 4261—Claimant awarded $6,000.00.)

CAROLYN B. GILL, WIDOW, ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July 7, 1950.

FEIRICH AND FEIRICH, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION *ACT—where award will be made under.* Where a resident engineer in the Department of Public Works and Buildings,

while in the course of his employment, and driving a car, owned by the State of Illinois, struck a number of guard posts along the highway, causing the car to overturn and resulting in his death, Court held that his widow was entitled to recover under Section 7 (a) of the Act.

DELANEY, J.

Claimant, Carolyn B. Gill, is the widow of Clarence S. Gill, deceased, who was employed on December 13, 1949, in the capacity of a resident engineer in the Department of Public Works and Buildings, Division of Waterways. Although his home was at 807 West Pecan Street, Carbondale, Illinois, he was on the above date occupying a room at Utica, Illinois, in a rooming house owned by Mrs. Sam Gardner. On December 13,1949, while driving a State owned automobile from the respondent's office at Joliet, returning to Utica in the evening, a short distance from Lisbon, Kendall County, Illinois, on Route 52, the deceased overshot a curve in the highway running into and knocking down a number of guard posts along the highway, causing the car which he was driving to overturn. Mr. Gill, the driver of the car, was fatally injured in the accident.

The record consists of the complaint, departmental report, transcript of evidence, and claimant's brief, respondent having orally waived the filing of a brief.

Upon consideration of this case, the Court finds it has jurisdiction of the parties hereto and of the subject matter; that the injury which resulted in the death of Mr. Gill arose out of and in the course of his employment; that the respondent had proper notice of the accident and the death of Mr. Gill, and the application for claim was filed in proper time as provided under Section 24 of the Workmen's Compensation Act, as amended. We further find from this record that deceased's annual earnings during the year immediately

prior to his death amounted to the sum of $3,594.00. His weekly compensation rate, therefore, would be $15.00. The death having occurred subsequent to July 18, 1949, this must be increased 50 per cent, making a compensation rate of $22.50 per week. The decedent had no children under sixteen years of age dependent upon him for support at the time of his death.

Claimant is, therefore, entitled to an award under Section 7 (a) of the Workmen's Compensation Act in the amount of $4,000.00, which must be increased 50 per cent, making a total award of $6,000.00.

An award is, therefore, made in favor of the claimant, Carolyn B. Gill, in the amount of $6,000.00, to be paid to her as follows:

$ 658.93, which has accrued and is payable forthwith;
$5,341.07 is payable in weekly installments of $22.50 per week, beginning July 14, 1950, for a period of 237 weeks, with an additional final payment of $8.57.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

An award is also entered in favor of Imogene Ward Steph for stenographic services in the sum of $22.74, which is payable forthwith. The Court finds that the amount charged is fair, reasonable and customary, and, said claim is allowed.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4273—Claimant awarded $166.88.)

HARRY W. HOPPER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July 7, 1950.

D. W. JOHNSTON:, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, employed as a common laborer by the Department of Public Works and Buildings, was Injured in the course of his employment when a steel cable in a culvert that he was cleaning broke and struck him, Court held that he was entitled to an award under Section 8 (c) of the Act for 10 percent disfigurement to his face.

DELANEY, J.

The claimant, Harry W. Hopper, was on September 21, 1949, employed by the respondent in the Department of Public Works and Buildings. On September 21, 1949, the claimant was in the course of his employment assisting in cleaning culverts when a steel cable broke, striking the claimant over his left eye. The blow caused a cut over his left eye about two inches in length. At the time claimant became employed by respondent, he was blind in the left eye. Claimant was treated by Dr. J. J. Grondone, who stated in his report, dated October 29, 1949, that claimant suffered no permanent disability. The only claim that can be made as a result of the injury is a disfigurement scar about two inches in length over claimant's left eye.

Claimant was first employed by the respondent on August 16,1949, as a common laborer at a wage of $1.00 an hour. Other Division employees working in the same capacity as claimant ordinarily work less than 200 days a year. Therefore, under Section 10 of the Act claimant is presumed to have earned $1,600.00 for the year preceding his injury.

No jurisdictional question is raised. Respondent and claimant were operating under the Workmen's Compensation Act, and the accident arose out of and in the course of the employment. Respondent furnished complete medical and hospital treatment. The only question is the extent of disability suffered by claimant. At the time of the accident claimant had one child under the age of sixteen years.

From the evidence and the Commissioner's observations, claimant is entitled to an award of 10 per cent (10%) of the amount allowed under Section 8, Paragraph (c) of the Workmen's Compensation Act. Claimant had one child under the age of sixteen years. Under Section 7, Paragraph (k), (3), the death benefit would be $4,450.00 increased 50 per cent, since the accident occurred after July 1,1949, or a sum of $6,675.00. Disfigurement under Section 8, Paragraph (c) equals ¼ of the amount payable as a death benefit of $1,668.75. For 10 per cent disfigurement, therefore, claimant should be allowed the sum of $166.88.

An award is, therefore, entered in favor of claimant, Harry W. Hopper, in the sum of $166.88, all of which has accrued and is payable forthwith.

Harry L. Livingstone was employed to take and transcribe the evidence at the hearing before Commissioner Summers, and charges in the amount of $41.40 were incurred for these services, which charges are fair, reasonable and customary. An award is, therefore, entered in favor of Harry L. Livingstone in the amount of $41.40, payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4130—Claimant awarded $2,955.29.)

ALICE M. GRANZOW, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion fled September 19, *1950.*

BIPPUS, ROSE, BURT AND PIERCE AND RODERICK N. WYCKOFF, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award will be made tinder. Where claimant, employed as a typist, file clerk, and relief switchboard operator by the Chicago office of the Auditor of Public Accounts of the State of Illinois, injured herself when she slipped and fell on a freshly waxed and highly polished floor near her desk in the' office, and, as a result, injured the left ulnar neive in her left arm, Court held she was entitled to an award under Section 8 (e) of the Act for 75 per cent loss of use of her left arm.

LANSDEN, J.

Claimant, Alice M. Gransow, seeks to recover from respondent under the Workmen's Compensation Act for injuries sustained by her in an accident arising out of and in the course of her employment as a typist, file clerk and relief switchboard operator in the Chicago office of the Auditor of Public Accounts.

No jurisdictional questions are involved.

On November 12, 1947, while engaged in the performance of her duties, claimant slipped and fell on a freshly waxed and highly polished linoleum floor near her desk in office space rented by the Auditor of Public Accounts. Claimant landed on the point of her left elbow, suffering a deep laceration, which bled profusely.

Since the Auditor's office was not organized to handle such injuries to employees, claimant went to her own doctors and paid all medical, drug' and hospital bills except as hereinafter noted.

The injury to claimant's left elbow turned out to be much more serious than would usually be expected

from such type of trauma. Claimant experienced continuous and intense pain. The left ulnar nerve became thickened, and finally had to be relocated by a neurological surgeon. Later, a technique known as a sympathetic block was resorted to, but to no avail, and claimant's doctor was of the opinion that the extreme sensitivity of claimant to pain would prevent any further attempt to use the technique above referred to. Coupled with all this were definite indications that a traumatic neurosis was positively affecting claimant's use of her left arm.

Claimant has some limitation of motion, flexion being limited about 25 per cent. However, in substance, claimant's left arm is not usable in her previous occupation except to a limited degree, and from all the evidence we conclude, even though claimant is left handed, that she has sustained a 75 per cent loss of the use of her left arm. *Mandel Bros.* v. *Ind. Corn.,* 359 Ill. 405; *Bell & Zoller Mining Co.* v. *Ind. Corn.,* 322 Ill. 395; *Bell* v. *State,* No. 4191, opinion filed March 7, 1950.

Claimant makes no serious claim to total permanent disability, and lack of proof of differential in earnings subsequent to her accident removes from our consideration any question of an award for partial permanent disability. *Cogdill* v. *State,* 18 C.C.R. 24; *Franklin County Coal Corp.* v. *Ind. Conz.,* 398 Ill. 528.

The record also shows that claimant is entitled to payment for temporary total disability limited to 64 weeks by reason of Section 8 (e) of the Workmen's Compensation Act, since an award for specific loss under said section is being made herein.

On the date of her accident, claimant was 42 years of age, single and had no dependents. Her earnings in

the year prior to her accident amounted to $2,280.00. Her rate of compensation is $19.50 per week.

From the date of her accident until July 1, 1949, when she left the service of respondent, claimant did perform services for respondent at various periods. When she was unable to work, she was paid her full salary of $190.00 per month. Subsequent to July 1, 1949, claimant was temporarily and totally disabled for a period sufficient to entitle her to 64 weeks of total temporary disability, including the periods prior to July 1, 1949, when she was unable to work for respondent.

For the 64 weeks of temporary total disability at $19.50 per week, claimant would be entitled to $1,248.00. However, from November 12,1947, to July 1,1949, claimant did not perform any services for respondent on 375 days for which she was paid, as we calculate from the record, the sum of $2,343.33. She was thus overpaid $1,095.33 which will be deducted from the award hereinafter entered.

William J. Cleary & Co., Chicago, Illinois, was employed to take and transcribe the testimony at the three hearings before Commissioner Tearney. Charges in the amount of $142.95 were incurred, which charges are customary and reasonable. An award is entered in favor of William J. Cleary & Co. for $142.95.

An award is entered in favor of claimant, Alice M. Granzow, under Section 8 (a) (e) (13) of the Workmen's Compensation Act for 64 weeks of temporary total disability at $19.50 per week, or the sum of $1,248.00; and a 75 per cent loss of use of her left arm, or 168¾ weeks at $19.50 per week, or the sum of $3,290.62, or a total award of $4,538.62, from which will be deducted the payment above referred to in the amount of $2,343.33, leaving a net award of $2,195.29. In addition, she is en-

titled to an award in the amount of $713.00 for medical, hospital and drug expenses incurred by her to relieve her from the effects of her accidental injury. One X-Ray bill and two small doctor bills also remain unpaid for which awards are made as hereinafter set forth.

These awards are payable as follows:

$ 713.00 which is payable to claimant forthwith for medical, hospital and drug expenses.

$2,899.93 less payment above referred to in the amount of $2,343.33, or the sum of $556.60, which has accrued and is payable forthwith.

$1,638.69 which is payable in weekly installments of $19.50 per week commencing on September 26, 1950, for a period of 84 weeks plus one final payment of $0.69.

$ 7.00 which is payable forthwith to Michigan Boulevard X-Ray Laboratory, 30 North Michigan Boulevard, Chicago, for X-Rays.

$ 25.00 which is payable forthwith to Dr. W. A. Gustafson, 700 North Michigan Boulevard, Chicago, for professional services.

$ 15.00 which is payable forthwith to Dr. H. B. Thomas, 30 North Michigan Avenue, Chicago, for professional services.

These awards are subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4167—Claimant awarded $1,200.00.)

JACK LINTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

ALFRED H. WILLISTON AND CARL E. ABRAHAMSON, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

NEGLIGENCE—state liable for *damages* when employee *fails to* give warning *to traffic that* a snowplow was abandoned. Where claimant hit a snowplow that was left on highway by respondent's employees, and the evidence showed that they failed to light warning flashers and that the plow extended over onto the wrong side of the highway, Court held that since the

claimant showed due care and caution on his own right, he was entitled to an award for the damages that he incurred as a result of the negligence of respondent.

SCHUMAN, C. J.

Claimant, Jack Linton, mas a passenger in an automobile driven by John Bigelow on November 29, 1947. Said automobile mas being driven in a southerly direction upon and along United States Route No. 12, near the City of Des Plaines, Illinois, being one of the public highways under the jurisdiction of the State of Illinois, Department of Public Works and Buildings, the complaint alleges that at about 12:30 o'clock in the morning, said automobile struck the plow on a State truck, which State truck was parked on the left hand side of the highway with the plow extending about 4 feet into the westerly line of said highway.

The evidence showed that during the night it snowed, and that William Buelow, a highway maintenance patrolman, was called out on the night of November 28, 1947 to plow snow off the road, and to particularly cinder crossings and intersections because of the icy condition of the pavement.

The testimony showed that the truck had burned out a transmission, and that the driver, William Buelow, had attempted to cross the highway to park the truck, but did not clear the highway because the truck stopped. The truck was loaded with 'cinders, and at that time a man by the name of 'Walter J. Geudtner was maintenance helper on the truck with William Buelow. The evidence discloses that both Buelow and Geudtner left the truck, and went in opposite directions to seek help in order to have the truck towed in; and, that neither one remained with the truck to warn persons lawfully driving in and upon the highway.

While there is some dispute with reference to the lights on the truck, it can be concluded from the evidence that the headlights of the truck and the red flasher light on the top of the truck were working and visible. There is no testimony in the record, however, that the blade of the snow plow, which protruded some four feet into the highway, could be visible by the lights that were testified to. In fact, it was testified by witnesses for the respondent — that, if the snow plow was up, it would obstruct the headlights on the truck.

From the facts, it could be concluded that after 10 o'clock at night the weather had cleared, and the visibility was fairly good, but that the condition of the highway was icy.

The facts are undisputed that the highway truck was parked on the wrong side of the highway, and the reason for this was explained by the testimony of the operator of the truck and his helper, that the transmission had burned out, and the operator was seeking to get the truck across the highway into a gravel driveway.

It is the contention of the claimant that no flares were placed, which would produce a warning light visible for a distance of 500 feet, and further contended that when a truck is disabled at night, the operator is charged with the duty of placing one such warning light approximately 200 feet in advance of the vehicle, and one each at a distance of approximately 100 and 200 feet, respectively, to the rear of the vehicle. The facts are undisputed that there were no such flares in front or to the rear of the vehicle. It was explained by the respondent that they had flares of the type used by the railroads, but that the same had become wet by reason of the snow, and that they could not be lighted. There was no explanation why

other type flares were not carried to meet the emergency, which they should have known existed that night.

While it is true that a statutory violation does not constitute negligence per se, still if the claimant establishes that there has been a statutory violation it mould make a prima facie case of negligence against the respondent. However, the evidence is undisputed that the plow of the truck extended some four feet into the highway. The Court's opinion is that the only conclusion that can be drawn from the evidence is that this created an exceedingly dangerous condition and should have been protected. The failure to have flares at the point mentioned or someone stationed at the truck to warn of this dangerous condition certainly constitutes negligence on the part of the respondent. It can be safely said that even though a person could have seen a flasher on the top of the truck, and the lights on the truck, there would be no indication that this did light up the unforeseen obstruction such as the plow.

The Court is familiar with the rules of law advanced by the respondent with reference to the violation of the statute as not being negligence per se; that it is not a statutory violation to park a truck on a portion of the highway because of mechanical failure, and the rules announced in the brief. However, the respondent did not park its truck on its side of the road, but attempted to reach a driveway on the left hand side of the highway, and, as a result thereof, left a snow plow attached to the truck protruding out into the highway. There were two men on the truck, they were both aware of the condition, because Geudtner testified that he particularly went to the front of the truck to see if the lights were burning. Even though he knew of this dangerous condition, he also left to seek help to have the truck removed.

There isn't any other conclusion from the facts that the Court can draw, but that the principal cause of the collision was the protrusion of the snow plow on the highway. This is corroborated by the fact that another automobile, other than the automobile in which the claimant was riding, also struck the truck, and that the proximate cause of the collision was due to the negligence of the respondent. The Court also concludes that there is no evidence of contributory negligence in the record on the part of the claimant.

There is no testimony in the record as to the negligence of the driver of the **car** in which claimant was riding. There is no evidence as to whether or not the car was being operated negligently. The undisputed facts in the record show that the car struck. the plow. This was shown by the Departmental Report introduced by the respondent.

The claimant stated that the car was approximately fifty feet in front of the truck before he saw the truck, and he stated that he did not see any lights, and the car that he was riding in was traveling about thirty miles an hour.

In order to sustain respondent's position, it would have to be shown that the claimant saw the truck in time, and that there mas danger in running into it, and that the claimant had an opportunity to see the truck before the driver of his car. The testimony would have to show that the claimant could have given a warning, and that the warning, if given, would have averted the accident. The failure of a guest in a car to warn a driver is not in and of itself contributory negligence. *(Bliss* v. *Knapp,* 331 App. **45;** *Rhoden* v. *Peoria Creamery* Co., **278** App. **452-465;** *Lasko* v. *Meier,* **329 App. 5.)**

The record is devoid of any negligence on the part of the driver. In fact, it can be assumed from the evidence in this record that the driver of the car did assume that if they saw a red flasher light that the truck would be operating in the right direction, and would not necessarily have to assume that some obstruction would be protruding from the truck into the highway. There is no dispute in the record but that the driver of the car was operating on a portion of the highway where he had a right to be. In fact the testimony shows that the plow was not only protruding into the highway, but was on an angle, and was down on the pavement.

The Court, therefore, concludes that the claimant is entitled to recover damages due to the negligence of the respondent, which was the proximate cause of the collision. The claimant introduced evidence as to his hospital bill and medical services for which no proper foundation was laid for its admission. However, there was no objection to this testimony, and it will, therefore, be necessary for the Court to consider it as competent. The evidence shows, without objection, that after the collision the claimant took sick, and was taken to the hospital where he remained for about a month; and was attended by a physician by the name of Dr. Harry Haber. The record shows that his hospital bill mas $430.00, that his physician's bill was $189.00, and that he had a lacerated liver. All this testimony was admitted without objection. Claimant further testified that he lost eight (8) weeks of work, and that he earned $55.00 a week.

An award is entered in favor of the claimant in the amount of $1,200.00.

(No. 4179—Claim denied.)

FRED M. GLASS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed ***September*** *19,* 1950.

FRANCIS P. FLYNN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where an award will be denied under.* Where a guard of the State Penitentiary, Joliet, Illinois, while in the course of his employment, was hit by an automobile, and as a result suffered a fracture of the 3rd and 4th spinal process of the lunibar spine, Court held that he was not entitled *to* an award under the Act on the ground that failure to file a claim within one (1) year after the date of the injury, or within one year after the date of the last payment of compensation, operates to divest the Court of jurisdiction to hear said claim.

SCHWMAN, C. J.

Claimant, Fred M. Glass, 63 fears of age, was employed as a guard at the State Penitentiary, Joliet, Illinois on March **23, 1947. It** was stipulated that the State of Illinois, respondent, and Fred M. Glass, claimant, were on the 23rd 'day of March, **1947** operating under the Workmen's Compensation Act of the State of Illinois.

The undisputed facts show that while the claimant was in the performance of his duties as a guard at about 10:45 P.M., and while returning-from the old quarry to tlie old prison, and walking along State Highway known as "Woodruff Road", he was struck by an automobile being driven by Miss Hope H. Placensio. As a result of this accident he sustained multiple abrasions of his face, lacerations of his right hand, contusions to his left side, fracture of the 1st, 2nd, 3rd and 4th spinal process of the lumbar spine as well as contusions, abrasions and severe strain of the right leg from the hip to the ankle.

The facts are without dispute that from March **23, 1947,** the date of the injury, to May 29, **1947,** when claim-

ant returned to work, that he received full salary. It has been held that if the respondent pays wages while a man is off work due to an injury, sustained while in the course of his employment, that it is tantamount to the payment of compensation unless expressly noted to the contrary.

The facts further show that claimant continued in his regular operation from May 29, 1947 up to and including December 16, 1948 when he was struck by an automobile in the City of Joliet, which did not occur out of the course of his employment with the respondent. After said date, he did not return to work, and upon a hearing by the Civil Service Commission of the State of Illinois was discharged from his duties as a guard from the Penitentiary because of his physical condition, and because he was inefficient, lax in performing his duties, guilty of insubordination, and violating the rules and regulations of the institution. The testimony discloses that this decision of the Commission was final, and that claimant was discharged.

There was no medical testimony submitted by claimant as to his physical condition or his ability to work, and the only thing in the record with reference to his condition, mas that he had not worked since December 28, 1948.

It is apparent to the Court from the facts of this case, that a jurisdictional question is involved. The Compensation Act provides that a claim for compensation must be filed within one year from the date of the injury, or the date of the last payment of compensation. The Court can reach no other conclusion in this case than that the claim should have been filed not later than May 28, 1948.

The claim not having been filed within the time provided by statute, an award will have to be denied.

A claim of William J. Cleary & Co. for stenographic services in the amount of $48.85 is found to be reasonable, and is allowed.

As to the claim of the claimant, an award is denied.

An award in the amount of $48.85 to William J. Cleary & Co. is allowed.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees.,'

(No. 4198—Claimant's previous award modified to the amount of $401.20 — Consolidated with No. 4199 — Claimant's previous award of $4,576.17, plus a pension for life of $416.00 a year upheld.)

THOMAS ROONEY AND MARY ROONEY, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

LITTLE, WILSON AND CLAUSEN, Attorneys for Claimants.

. IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*previous award modified on rehearing.* Where Thomas Rooney had been given an award for specific loss due to accident, which happened while he and his wife were employed by respondent at the State Training School for Boys, St. Charles, Illinois, and later the Court grants a petition for rehearing, and respondent and Thomas Rooney stipulate there is no claim for specific loss, Court held that he was not entitled to an award for permanent disability, and modified the award from $1,619.95 to $401.20. It was further stipulated that the portion of the original opinion finding that Mary Rooney suffered traumatic neurosis, which rendered her totally and permanently disabled, should stand. Court held therein she was entitled to an award under the Act for total permanent disability, and also an annual pension for life of $416.00.

LANSDEN, J.

These cases were consolidated for hearing and opinion, since both arose out of the same occurrence.

Claimants, Thomas Rooney and his wife, Mary Rooney, seek to recover under the Workmen's Compensation Act for injuries that arose out of and in the course of their employment as cottage parents at the State Training School for Boys, St. Charles, Illinois, operated by the Department of Public Welfare.

On July 7,1950, an opinion was handed down in these cases in which an award was made to claimant, Thomas Rooney, for temporary total disability that he had not been paid, and a specific loss under Section 8 (e) of the Act; and an award was made to claimant, Mary Rooney, for total permanent disability, plus a pension for life, and, in addition, she was awarded a small sum for medical expenses incurred by her.

On July **31,** 1950, respondent filed a petition for rehearing applicable only to the award to Thomas Rooney. Such petition for rehearing was granted on August 7, 1950.

On September 6, 1950, claimant, Thomas Rooney, and respondent filed a stipulation in his case, the effect of which is to remove entirely from this case his claim for specific loss, which the original opinion had erroneously awarded him. Such stipulation is hereby approved, and the remainder 'of this opinion has been recast to reflect the impact of the stipulation.

It should also be mentioned that this opinion on rehearing is final on the date of its filing. The award to Mary Rooney has already become final, neither side having requested a rehearing within the time allowed. The award made herein to Thomas Rooney is also final, since we construe the intent of the stipulation to be that both sides waive any further rights to petition for rehearing.

On November 25, 1948, claimants were supervising inmates in Adams Cottage at the aforesaid institution.

Certain inmates requested Thomas Rooney to join them in a game of cards, but when he entered the room with them, he was attacked and brutally beaten, chiefly over the head. Mary Rooney heard the commotion, and rushed to her husband's assistance, and suffered the same brutal treatment. The inmates who participated in this cruel and premeditated assault did it as the first step in a plan to escape from the institution.

Fortunately, one inmate was not a party to the plan, and he was able to rescue Mary Rooney, and get word to other authorities at the institution. Thomas Rooney lay unconscious in the room where the assault began, but, Mary Rooney, with assistance, was able to get to a doctor on the school grounds.

Thomas Rooney sustained a compound skull fracture, several head lacerations, and a fractured little finger on his left hand. He was taken immediately to the Illinois Research Hospital, Chicago, Illinois, where he remained for 10 to 12 days. His recovery was uneventful, but he has not worked for respondent since the date of the accident.

The only permanent effects that Thomas Rooney has from his accident are a minor denting of the skull, intermittent headaches, and ringing and buzzing in his ears. There is a definite loss of hearing in both ears, attributable to the accident, but not being total and complete, no recovery can be had by virtue of Section 8 (e) (17) of the Workmen's Compensation **Act.**

Thomas Rooney suffered from traumatic neurosis for a considerable period of time after his accident. On October 13, 1949, one of respondent's doctors so found, and based his finding on the frightful and terrifying experience Thomas Rooney had gone through, coupled with his severe injuries. However, on January 16, 1950, one

of claimant's doctors found that his neurosis was no longer disabling. Thomas Rooney is, therefore, not entitled to an award for total permanent disability.

Thomas Rooney, although so alleging in his complaint, offered no proof as to partial permanent disability. But he is entitled to compensation for temporary total disability from the day after his accident on November 26, 1948, up to and including January 16, 1950.

Mary Rooney sustained lacerations on her head, requiring twenty-seven stitches, mild concussion, shock, contusions of the chest, and abrasions on the legs. She was hospitalized for two weeks at the Community Hospital, Geneva, Illinois. Subsequently, she has been periodically under the care of doctors, and has performed no services for respondent.

On the date of the last hearing in this case on January 17, 1950, Mary Rooney suffered from severe headaches, weakness, loss of weight, general rundown condition, debility, dizziness, ringing in her ears, and a definite fear complex. She appeared much older than her actual age, and coulcl no longer stay alone in her home, or in the dark. In other words, Mary Rooney exhibited a typical case of traumatic neurosis, which had rendered her totaily and permanently disabled. Her condition was felt to be permanent, and medical authorities indicate that a recovery from severe traumatic neurosis of such duration in a female is exceedingly remote. *Gray's Attorneys' Textbook* of *Medicine,* vol. 2, para. 101.02, 101.04, 101.10.

This Court has previously granted awards in "neurosis" cases. *Gross* v. *State,* **11** C.C.R. 310; *Molsen* v. *State,* No. 4168, opinion filed February 14, 1950; *Peoples* v. *State,* No. **4248,** opinion filed June 6, 1950. Our opinions are supported by decisions of the Supreme Court

of Illinois. *Harrisburg Coal Co.* v. *Ind. Corn.,* 315 Ill. 377; *U. S. Fuel Co.* v. *Ind. Com.,* 313 Ill. 590; *Postal Tel. Co.* v. *Ind. Corn.,* 345 Ill. 349.

Mary Rooney is, therefore, entitled to an award for total permanent disability, plus a lifetime pension.

The record also discloses that Mary Rooiiey has paid the sum of $33.00 for medical treatment for which she has not been reimbursed.

Two hearings mere held in this case before Commissioner Wise. The first hearing was reported by Mildred Pratt Conner, and the second by Hildegard Daleiden, Aurora, Illinois. Charges of $36.00 and $46.20, respectively, were incurred, which charges are reasonable. The bill of Mildred Pratt Conner was paid for by the law firm of Little, Wilson and Clausen, Aurora, Illinois, and an award for $36.00 is entered in favor of such firm. An award is entered in favor of Hildegard Daleiden for $46.20.

On the date of the accident Thomas Rooney'was 58 years of age, and Mary Rooiiey was 55 years of age. Neither had any children under the-age of sixteen dependent upon them for support. The earnings of Thomas Rooney and Mary Rooney in the year prior to their accident amounted to $1,907.00 and $1,823.17, respectively. The rate of compensation for each is, therefore, $19.50 per week.

Under the formula used by the Department of Public Welfare, claimants were each paid after the accident one month at full salary, and five months at 60 per cent of full salary. Payments to Thomas Rooney amounted to $760.44, and to Mary Rooney to $656.83.

An award is, therefore, entered in favor of claimant, Thomas Rooney, under Section 8 (b) (L) of the Workmen's Compensation Act for 59 **4/7** weeks of temporary

total disability, or the sum of $1,161.64. From this sum must be deducted the payments above referred to, amounting to $760.44, leaving a net award of $401.20, all of which has accrued and is payable forthwith.

An award is, therefore, entered in favor of claimant, Mary Rooney, under Section 8 (a) (b) (f) (L) of the Workmen's Compensation Act for total permanent disability in the amount of $5,200.00, less the sum of $656.83, or a net award of $4543.17, plus a pension for life of 8 per cent of $5,200.00, or $416.00 per year, payable monthly after said sum of $4,543.17 shall have been paid to claimant. In addition, claimant, Mary Rooney, is entitled to an award of $33.00 for medical expenses incurred by her for which she has not been reimbursed. These awards are payable as follows :

$ 33.00 which is payable forthwith for medical expenses,

$1,844.14 less payments of $656.83 already made, or the sum of $1,187.31, which has accrued and is payable forthwith,

$3,355.86 which is payable in weekly installments of $19.50 per week, commencing on September 26, 1950, for a period of 172 weeks, plus one final payment of $1.86, and thereafter a pension for life payable monthly, commencing one month after the date of the payment of said final payment of $1.86 at the rate of $34.66.

Jurisdiction of the case of Mary Rooney, No. 4199, is specifically reserved for the entry of such further orders as may from time to time be necessary. *Penwell* v. *State*, 11 C.C.R. 365, and the same case, No. 3025, opinion filed May 9, 1950; *Green* v. *State*, No. 4236, opinion filed June 6, 1950.

These awards are subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4204—Claim denied.)

DOMINIC DI ORIO, ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

CIRESE AND CIRESE, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

NEGLIGENCE—*State is not liable for defect in road unless claimant proves that it had either actual* or *constructive notice of the defect.* Where claimant's auto hit a defect on a State highway, but claimant failed to show that the respondent had notice of said defect. Court held that claimant was not entitled to an award on the ground that the State is not an insurer, and in order to collect on such action claimant must prove negligence on the part of the State.

SCHUMAN, C. J.

The facts in this case show that Dominic Di Orio was the owner of a 1946 Chrysler automobile, and that on June 14, 1948 he, together with his wife, Dorothy Di Orio, and his wife's brother, a minor of the age of 4 years, were riding in said automobile at about 11:30 A.M. in the morning, and driving east on Grand Avenue. The claimant, Dominic Di Orio, was driving. Dorothy, his wife, was sitting in the front seat beside him, and her young brother was on her lap. The testimony showed that Dominic Di Orio came down a small hill, and saw a hole in the road when he was about 10 or 12 feet from it; that he was driving about 30 miles an hour, was unable to miss the hole, struck it, and turned his car over into a ditch.

The evidence showed that medical treatments mere necessary, and, Dominic Di Orio, together with his wife, Dorothy, sustained loss of time from mork as a result of injuries'received in the accident.

At the place where the accident occurred, the high-

way had been designated as Illinois Federal Secondary Proj. No. S-167 (1)Section 35, located in DuPage County, Illinois. This road was originally constructed in cooperation with the Federal Government, and turned over to DuPage County to maintain. Because of the determination of the Court hereinafter set forth, it will not be necessary to discuss whether the State or the County would be liable to maintain this road. The Court feels that in order to hold the State for any liability for defects in roads that there must be competent evidence in the record to show that the State had either actual notice, or constructive notice of a defect in the road, and negligently failed to take steps to protect the traveling public.

It would establish a dangerous precedent for this Court to hold that the State would be liable for all defects on a highway, which it was under a duty to maintain. There is no evidence in this record of the nature of the hole, its size, how long it had been there, how it had been created, or of any notice to the State of its existence, either actual or constructive. There is, therefore, nothing in the record to show that the respondent was guilty of any negligence. To hold that the State would be liable without notice, actual or constructive, would be making the State an insurer.

This Court, by prior decision, is committed to the rule that the evidence must show that the State had actual or constructive notice of the defect, and negligently failed to take precaution to protect the traveling public. (*Dockery* v. *State*, 18 C.C.R. 177.)

For the reasons assigned, claim is denied.

(No, 4212—Claimant awarded $889.20.)

GILBERT WINGERTER, Claimant, ***vs.*** **STATE OF ILLINOIS,** Respondent.

Opinion filed September 19, 1950.

JOHN R. SPRAGUE, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. **ARTHUR** NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S **COMPENSATION** ACT—*when an award* ***will*** *be made under.* Where claimant, employed as a laborer by the Division of Highways, was hit by a truck and knocked against an air compressor that he was using, resulting in a fracture of the left tibia and fibula near the distal end, Court held that he was entitled to an award under Section 8 of the Act for 20 per cent partial, permanent loss of use of the left leg below the knee.

DELANEY, J.

This is a claim of Gilbert Wingerter against the respondent, the State of Illinois, for personal injuries sustained on his first day of employment, January 6, 1948.

The complaint alleges that the claimant was assigned to operate an air hammer used to break out defective pavement on S. B. I. Route No. 3 in Randolph County. Shortly after 11:00 A.M., the air cornpressor and equipment were moved to a new location. At approximately 11:30 A.M., at a point about one mile north of Ellis Grove, Mr. Wingerter lifted the air hammer from the air compressor, and stepped onto the pavement. The corner of the body of a passing Division truck hit Mr. Wingerter, knocking him against the compressor, and injuring his left leg.

The Division had Mr. Wingerter taken to St. Clement's Hospital, Red Bud, Illinois, where Dr. A. C. Scott, Evansville, was placed in charge of the case. Dr. Scott secured the services of a specialist in orthopedics, Dr. Kilien F. Fritsch, East St. Louis, Illinois, to aid him in reducing the leg fractures suffered by Mr. Wingerter.

Dr. **A. C.** Scott testified that his examination showed Mr. Wingerter received a fracture of the left tibia, or the larger bone, and the left fibula, or smaller bone, near the distal end; also, a fracture that was called comminuted and compound. By compound, Dr. Scott referred to that entrance from the outside to the side of the fracture. By comminuted, Dr. Scott referred to the facts that the leg was broken into several pieces.

Mr. Wingerter was married, and had three children under 16 years of age dependent upon him for support. As earlier stated, he was first employed on January *6,* 1948, as a temporary Laborer in one of the Division's day labor units at a wage rate of $1.40 an hour. Employees working in a similar capacity ordinarily work less than 200 days a year. Therefore, under Section 10 *of* the Workmen's Compensation Act, Mr. Wingerter is presumed to have earned $2,240.00 in the year preceding the accident.

The record consists of a complaint, departmental report, transcript of evidence, three statements of radiographic findings, and six X-Ray exhibits.

There is but one question, therefore, for this Court to determine—the nature and extent of his injury, and whether or not said injury has caused him any degree of permanent disability, as defined under the terms and provisions of the Workmen's Compensation Act of this State, Section 8, Paragraph (e) 15.

Reviewing the opinions of Dr. Fred Reynolds, Dr. Kilien Fritsch, and the observations of the Commissioner of this Court, we feel Mr. Wingerter sustained a permanent impairment, estimated to be in the neighborhood of 20 per cent of the left leg below the knee.

Following his injury, the Division paid Mr. Wingerter compensation at the rate of $23.40 a week for the period January **7** to August **31,** 1948, in the total amount

of $759.59. Compensation payments were terminated August 31, 1948, one week after Dr. Reynold's examination of August 24, 1948, at which time the doctor recommended that Mr. Wingerter return to light **work.**

The Division of Highways has paid the following creditors in connection with Mr. Wingerter's injury; Dr. Kilien F. Fritsch, East St. Louis, $75.00; Dr. A. C. Scott, Evansville, $150.00; Dr. Wendell C. Scott, St. Louis, $37.00; Dr. J. Albert Key, St. Louis, $45.00; St. Clement's Hospital, Red Bud, $258.03; and claimant, Gilbert Wingerter, miscellaneous expenses, $17.47, making a total sum of $582.50 paid.

No jurisdictional questions were raised.

An award is, therefore, made to claimant, Gilbert Wingerter, for 20 per cent partial, permanent loss of use of his left leg below the knee, being 38 weeks. The claimant had three children under the age of 16 years dependent upon him **for** support at the time of the accident, so that the weekly maximum rate is increased to $18.00 per week. The injury, having occurred after July 1, 1947, this must be increased 30 per cent, making a compensation rate of $23.40 per week, or the sum of $889.20, all of which has accrued, and is payable forthwith (Sec. 8-J-3).

The testimony at the hearing was taken and transcribed by Henry P. Keefe, who has submitted a statement for his services in the amount of $41.90. This statement appears reasonable for the services rendered.

An award is, therefore, entered in favor of Henry P. Keefe, for taking and transcribing testimony in the amount of $41.90, payable forthwith.

The award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State empl'oyees".

(No. 4221—Claimant awarded $2,000.00.)

HELEN M. KASPARI, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

JAMES W. BREEN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S OCCUPATIONAL DISEASES ACT—*where an award will be made under.* Where a female registered nurse, employed by the Chicago State Hospital for duty in the tuberculosis wards and other violent wards, contracts tuberculosis, and it is shown that she worked extra hours and at times did not get one day off a week in violation of "An Act to promote the public health and comfort of persons employed by providing one day of rest in seven" (Ill. Rev. Stat. 1949, Chap. 48, Sec. 8b), Court held that violation of the Statute constituted negligence on the part of respondent, and that claimant was entitled to an award under Section 3 of the Act.

LANSDEN, J.

Claimant, Helen M. Kaspari, seeks to recover from respondent under Section 3 of the Workmen's Occupational Diseases Act, because she contracted tuberculosis while employed as a registered nurse at the Chicago State Hospital, operated by the Department of Public Welfare.

In 1935, claimant, entered State service. In 1936, she was transferred to the Chicago State Hospital, and worked as a registered nurse until June, 1947. In that month, after failing to throw off a slight cold, claimant was examined, and found to have arrested minimal tuberculosis in the right upper lobe. Sputum examinations were negative.

Claimant was hospitalized at the Chicago State Hospital for approximately a month, beginning in July, and ending in August, 1947. After hospitalization, claimant took a leave of absence, which continued until March, 1948. However, during her leave of absence, claimant rested, and was examined periodically.

In March, 1948, the Medical Advisory Committee on Chest Diseases at the Chicago State Hospital agreed that claimant's tuberculosis was arrested, and she was reinstated, and returned to duty.

In September, 1948, reactivation of her tuberculosis was indicated, and claimant was again hospitalized until November, 1948.

In December, 1948, claimant entered the Edwards Sanitorium, Naperville, Illinois, a private institution, where she remained until April, 1949, when lack of funds compelled her to return to her home, and continue rest there. This institution reported one positive sputum examination.

In August, 1949, another examination at the Chicago State Hospital disclosed further instability and activation of claimant's tuberculosis, and, sanitorium care being advised, claimant entered the Chicago Municipal Tuberculosis Sanitorium where she was a patient at the time of the hearing of this case earlier this year.

From 1940 on, claimant worked on the night shift from 11 P.M. to 7 A.M.. Her duties required her to enter, and regularly work in the acute hospital, the tuberculosis wards, the violent wards, and infirmaries.

For a considerable period prior to June, 1947, and again in the period from March to September, 1948, claimant worked seven days per week with no clay off. Claimant testified that such a heavy work schedule tired her considerably.

It has been held in this Court that a State employee in a State institution whose duties require her to come in regular contact with tubercular patients, and, who thereby contracts tuberculosis, is entitled to a recovery under the Workmen's Occupational Diseases Act, if the

requirements of Section 3 are met. *Wheeler* v. *State*, 12 C.C.R. 254.

Since respondent has not elected to come under said Act, a claimant must proceed under Section 3 thereof in a negligence action with certain defenses barred to respondent. *Wheeler* v. *State*, 12 C.C.R. 254; *Domke* v. *State*, 12 C.C.R. 451; *Norman* v. *State*, 16 C.C.R. 128; *Odle* v. *State*, 16 C.C.R. 183,

To be entitled to compensation under the Workmen's Occupational Diseases Act, a claimant must show that respondent violated :

1) A rule or rules of the Industrial Commission made pursuant to the Health and Safety Act of
2) A Statute of this State intended for the protection of the health of employees. *Domke* v. *State*, 12 C.C.R. 451.

Being a registered nurse, claimant is excluded from the benefits of "An Act concerning the hours of employment of females in certain occupations" since such Act by Section 1½ thereof does not apply to graduate nurses, it being clear that a registered nurse would also be a graduate nurse. Ill. Rev. Stat. 1949, Chap. 48, Sees. 5, 5a.

However, claimant is entitled to the benefits of "An Act to promote the public health and comfort of persons employed by providing one day of rest in seven," which provides among other things that an employee in a hospital, etc., shall be allowed at least twenty-four consecutive hours of rest in every calendar week, in addition to the regular period of rest allowed at the close of each working day. Ill. Rev. Stat. 1949, Chap. 48, Sec. 8b. Cf. *Domke* v. *State*, 12 C.C.R. 451.

That such statute has been violated is shown by claimant's testimony, and such violation was negligence on the part of respondent under Section 3 of the Workmen's Occupational Diseases Act. That such violation

proximately resulted in the contracting of tuberculosis by claimant is virtually admitted in the Departmental Report of the Department of Public Welfare admitted in evidence in this case which states in part as follows :

". . . and the continuous employment (of claimant) as a nurse in various capacities at the Chicago State Hospital make(s) it very difficult to exclude service connected illness."

Claimant is, therefore, entitled to an award.

As to damages, there is evidence in the record to the effect that, with continued sanitorium confinement and medication, claimant's tuberculosis may become permanently arrested. We, therefore, conclude that claimant is entitled to an award of $2,000.00.

William J. Cleary & Co., Chicago, Illinois, was employed to take and transcribe the testimony before Commissioner Tearney. Charges in the amount of $57.40 were incurred, which are reasonable and customary, and an award is entered in favor of William J. Cleary & Co. for $57.40.

An award is entered in favor of claimant, Helen M. Kaspari, for $2,000.00.

(No. 4223—Claim denied.)

CHARLES ROHLES, SR., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 9, *1950.*

Petition of claimant for rehearing denied September 19, *1950.*

ROY A. PTACIN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be denied under.* Where claimant, employed as a painter at the Chicago State Hospital, after reporting for work and while walking to the place where he was assigned to work, slipped into a depression in the pavement, fell, and sustained a frac-

tured rib, concussion and other bruises, Court held he was not entitled to an award for permanent partial incapacity. Court stated that to be so entitled he must show the differential between what he earned before the accident, and what he is earning, or able to earn, in some suitable employment after the accident. This he failed to do in a convincing manner.

LANSDEN, J.

On February 15, 1949, claimant, Charles Rohles, Sr., was employed as a painter at the Chicago State Hospital of the Department of Public Welfare. On that day, after reporting for duty, and while walking to the place where he was assigned to work, he slipped into a depression in the pavement, fell, and sustained a fractured rib, concussion, and other bruises. He was rendered unconscious by the fall.

Claimant was hospitalized, except for a few days, until March 6, 1949, and he returned to work on March 28, 1949. Claimant was earning in excess of $400.00 per month at the time of the accident, and his earnings in the year prior thereto amounted to $4,642.00.

During the period claimant was unable to work, he was paid his full rate of pay, and when he returned to work he was assigned to supervisory duties, but at the same rate of pay. He worked for respondent until December 15, 1949, at which time he was let out as a result of a personnel reorganization which reduced the number of painters regularly employed at the Chicago State Hospital.

The Departmental Report of the Department of Public Welfare, and the testimony of two doctors, are in substantial agreement that claimant has a long standing osteo-arthritis, which limits the function of his spine. Both doctors testified that a fall might have aggravated his condition. Claimant testified that he suffered from dizzy spells due to a heart condition.

In general, the testimony as to the extent of claimant's disability leads to the conclusion that claimant has some permanent partial incapacity. Whether such incapacity is the result of the accident that occurred on February 15, 1949 will not be decided herein, because of claimant's failure to prove that his earning capacity was diminished as a result of alleged injuries.

For a claimant to be entitled to an award under Section 8(d) of the Workmen's Compensation Act for permanent partial incapacity, he must show the differential between what he earned before the accident, and what he is earning, or able to earn, in some suitable employment after the accident. *Cogdill* v. *State,* 18 C.C.R. 24; *Merritt* v. *Ind. Com.,* 322 111. 160.

Claimant testified he was paid his full wages after he returned to work. The Departmental Report shows that he earned more per month after the accident than he did before. So for eight and one-half months after he returned to work, claimant had greater earnings.

However, claimant testified he tried to work after his employmant with respondent was terminated, and worked for two hours at $1.00 per hour, but had to quit because he could not perform the duties required. Claimant *thought* that he could find a job that would pay him $40.00 per week. On cross-examination, counsel for respondent seriously shock the credibility of claimant by getting admissions from claimant of a series of accidents, which had happened to claimant while employed by respondent, when claimant had testified in chief that he had never been sick a day in his life. Claimant had heart trouble, which he admitted, on cross-examination, made him dizzy at times. Claimant's testimony falls far short of the proof required to establish a differential

in earnings when we give to it the weight to which it was entitled after cross-examination.

A business agent for the union of which claimant was a member also testified for claimant to the effect that claimant could not earn the prevailing scale of wages, but his testimony was devoid of any figures that could be used by this Court for calculation of an award.

In *Franklin County Coal Corporation* v. *Ind. Com.*, **398** Ill. 528, it was held that, under Section 8 (d) of the Workmen's Compensation Act, proof should be required of earnings for a substantial period prior to the accident and after return to work, and, in the event the injured person does not return to work, proof of what he is able to earn in some suitable employment, will suffice.

Applying that rule to this case, we find that claimant earned approximately **$387.00** per month on the average in the year prior to his accident. For the eight and one-half months claimant worked after he returned to work in March, **1949,** he was paid an average-of approximately $410.00 per month. The proof **of** what claimant could earn in suitable employment after he was let out by respondent was unconvincing and lacking in figures to he used for purposes of calculation.

An award to claimant must therefore be denied.

Since claimant was paid his full wages during the time he was disabled with knowledge of his injury and without denial of liability, any award for temporary total incapacity must be held to have been paid in full. *Olney Seed* Co. v. *Ind. Com.,* **403** Ill. **587.**

William **J.** Cleary & Co., Court Reporters, was employed to take and transcribe the testimony before Commissioner Tearney. Charges in the amount of **$63.60** were incurred, and an award for such sum is hereby entered-in favor of William **J.** Cleary & Co.

This award is subject to the approval of the Governor as provided by Section 3 of "An Act concerning the payment of compensation awards to State employees."

Award to claimant denied.

(No. 4225—Claimant awarded $341.25.)

CLIFFE COMPTON, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion fled September 19, 1950.

PAULSON, MORGAN AND JORDAN, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where clamant, employed as an attendant by the Elgin State Hospital, injured himself when a door slammed on his left hand, and the distal phalanx of the second finger was traumatically severed, Court held that claimant was entitled to an award under Section 8 (e) (3) (6) of the Act for 50 per cent loss of the second finger of the left hand.

LANSDEN, J.

On March 18, 1949, claimant, Cliffe Compton, was employed as an attendant at the Elgin State Hospital operated by the Department of Public Welfare.

Shortly after going to work for the day, while moving patients from one room to another, claimant's second finger on his left hand was caught between the door jamb and the metal edged door, and the distal phalanx thereof was traumatically severed.

For the specific loss; claimant brings this action under the Workmen's Compensation Act, and he is entitled to recover under Section 8 (e) (3) (6) of the Act, the accident concededly having arisen out of and in the course of his employment.

Claimant lost no compensable time from his employment as a result of his accident, and all medical treatment was furnished by respondent. No jurisdictional questions are involved.

Claimant had worked for respondent for almost 25 years, and in the year prior to his accident, he earned $2,100.00. Claimant, aged 66, was married, but had no children. His rate of compensation is, therefore, $19.50 per week.

William J. Cleary & Co., Court Reporters, Chicago, Illinois, was employed to take and transcribe the testimony before Commissioner Tearney. Charges of $21.10 were incurred, which are reasonable and customary. An award is, therefore, entered in favor of William J. Cleary & Co. for $21.10.

An award is entered in favor of claimant, Cliffe Compton, under Section 8 (e) (3) (6) of the Workmen's Compensation Act for a fifty per cent loss of the second finger of his left hand., by reason of the loss of the distal phalanx of such finger, or 17½ weeks at $19.50 per week, or the sum of $341.25, all of which has accrued and is payable forthwith.

The award is subject to the approval of the Governor as provided in Section 3 of "An Act to provide for the payment of compensation awards to State employees."

(No. 4237—Claimant awarded $1,500.00.)

GLADYCE RAEUBER, MOTHER OF KENNETH SHROPSHIRE, DECEASED, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

BELL AND SMITH, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant's son, employed as a laborer by the Division of Highways, while in the course of employment fell from a truck that was hauling gravel and suffered a skull fracture that resulted in his death, and it was proved that deceased made contributions to the support of the family, Court held that the evidence was sufficient to establish a partial dependency of the claimant, and that she was entitled to an award under Section 7 (c) of the Act.

SCHUMAN, C. J.

Claim was filed herein on October 27, 1949 by Gladyce Raeuber for the death of her son, which occurred as a result of an accident on July 28, 1949. Claim is made that the grand-parents of said deceased, Mr. and Mrs. Jasper Otis, were partially dependent upon the earnings of deceased at the time of injury.

Kenneth Shropshire was first employed by the Division of Highways on July 5, 1949 as a laborer at a wage rate of one dollar ($1.00) per hour. He worked from the date of his first employment until his death on July 28, 1949. The claimant, not having worked a full year and less than 200 days, compensation will have to be figured on the minimum basis.

On said date, he was assisting Mr. Joseph Townsend, an equipment operator, in hauling gravel, and while spreading same on the highway, decedent fell from the truck, and was found unconscious. He was taken to the hospital, where he died shortly thereafter. The examination revealed a crushing skull fracture, lacerations and contusions about the left ear, probable fracture of the left ankle, and possible internal injuries.

The accident arose out of and in the course of decedent's employment, claim was made, and complaint filed within the time required by law.

The evidence discloses that the decedent was nineteen (19) years of age, not married, and left surviving

a mother, sisters and grandparents. During the school year he was actively engaged in all sports at the Watseka High School, and did not work during that period of time. He was employed during the summer of 1948, and made approximately $260.00. His only employment during the summer of 1949 was a job with the Division of Highways. The mother testified that she, her husband, two daughters, decedent and grandparents lived together in Watseka, and all contributed to the support of the family, and all the expenses of the household.

The Court concludes that the evidence was sufficient to establish partial dependency of the claimant, the mother of the decedent. The claimant is, therefore, entitled to the minimum award under Section 7 (c) of the Workmen's Compensation Act, because the evidence did not set forth any sums of money by which any other conclusion could be reached. Claimant is entitled, therefore, to an award of $1,500.00.

Letha Finch submitted a statement in the amount of $52.50 for stenographic services. This amount is found to be a fair and reasonable charge.

An award is, therefore, entered in favor of the claimant in the amount of $1,500.00 as follows:

$1,327.50 has accrued to September 15, 1950, for a total of 59 weeks at $22.50 a week.

$ 172.50 payable in weekly installments of $22.50, commencing on September '22, 1950 for a period of 7 weeks, with one final payment of $15.00.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, the jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

An award is also entered in favor of Letha Finch

for stenographic services in the amount of **$52.50,** which is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees. --

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(No. 4241—Claimant awarded $78.00.)

O. R. **WILLEY,** Claimant, *vs.* **STATE** OF **ILLINOIS,** Respondent.

Opinion.fled September 19, *1950.*

ROBERT H. ALLISON AND HERBERT N. TRAGETHON, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where an award will be made under.* Where claimant, employed by the Division of Highways, injured the index finger of his left hand when a bit stuck on an electric drill that he was using to construct a shield over a truck cab; Court held that he was entitled to an award under the Act for a 10 per cent loss of use of the index finger of the left hand.

DELANEY, **J.**

Claimant, **O.** R. Willey, was employed on February **14, 1949,** in the Division of Highways, Department of Public Works and Buildings. On that day, while using an electric drill to cut holes in a metal truck bed preliminary to the construction of a shield over the truck cab, the bit stuck. This caused the drill to twist in claimant's hand before the power could be shut off. The index finger of claimant's left hand was injured.

The claimant received no medical attention until March 8, **1949,** at which time he was treated by Dr. Charles W. Harrison of the Olney Sanitarium Clinic. Dr. Harrison's final report of April **29,1949** indicated **a** frac-

ture and slight stiffness of index finger. Dr. F. E. Fleischli in his report of May 8, 1950 stated claimant had a flexor tendon injury, which is permanent. An examination by Frank M. Summers, a Commissioner of this Court, showed that claimant sustained a 10 per cent loss of use of the index finger of his left hand as a result of the injury.

No jurisdictional question is raised. Respondent and claimant were operating under the Workmen's Compensation Act, and the accident in question arose out of and in the course of the employment.

The record consists of the complaint, departmental report, waiver of briefs of respondent and elaimant, and transcript of the testimony.

The claimant at the time of the injury had no children under the age of sixteen years. Claimant received earnings from respondent in the amount of $2,820.00 in the year preceding his injury. Mr. Willey did not lose any time, and was paid full salary throughout his period of disability.

For a 10 per cent loss of use of the index finger of his left hand, under Section 8, Paragraph (e) 2, the claimant should receive from the respondent, the compensation rate, $19.50 per week for **4** weeks.

An award is, therefore, made to claimant, O. R. Willey, in the sum of $78.00, all of which has accrued and is payable forthwith.

Johnson Fleming was employed to take and transcribe the evidence at the hearing before Commissioner Summers. Charges in the amount of $13.75 were incurred for these services, which charges are fair, reasonable and customary. An award is, therefore, entered in favor of Johnson Fleming in the amount of $13.75, payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4244—Claimant awarded $5,907.38.)

ROSA LEE BRUSH, WIDOW, ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

RUSSELL E. KALK, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant's deceased, employed as an automotive mechanic by the Division of Highways, immediately after putting in a 62 pound battery into a grader cab complained of pains in his chest, and later that night was taken to the hospital with a severe heart attack, which within 10 days caused his demise, Court held that there was a causal connection between the accidental injury of deceased and his death, thus entitling his widow to an award under Section 7 of the Act.

LANSDEN, J.

Claimant, Rosa Lee Brush, widow of LeRoy Brush, deceased, seeks to recover from respondent under the Workmen's Compensation Act for the death of her husband as the result of an accident arising out of and in the course of his employment by respondent as an automotive mechanic in the Division of Highways, Department of Public Works and Buildings.

On July 27, 1949, a hot, humid day, decedent was working at his assigned duties, having been instructed to install a new battery in a road grader, which was being repaired at the State garage, Elgin, Illinois.

Such battery weighed 62 pounds, and decedent wheeled it on a hand truck to within 30 feet of the grader, and carried it the remainder of the distance. Decedent

then lifted the battery vertically 4½ feet to the floor of the grader cab, and, after getting into the cab, decedent lifted the battery another 1½ feet into the battery box. Then decedent, leaning down in a necessarily awkward and straining position, made the necessary connections.

Shortly after installing the battery, decedent complained of chest pains and shortness of breath. He rested the balance of the afternoon, and went home at quitting time.

Decedent became acutely ill during the night, and was taken to a hospital where his condition was diagnosed as a severe heart attack.

Decedent had pains in his chest and arms. He was short of breath and in medical shock. His pulse was rapid, his heart beat weak, his blood pressure low. He was pale, perspiring and cold, and his skin was blue.

For some days ,decedent showed improvement in the hospital, but on August 7, 1949, he displayed the same symptoms he had manifested earlier but to an intensified degree, and he then died.

Prior to July 27, 1949, decedent had been in good health, and had never shown any signs of having a diseased heart.

Medical testimony in the case indicated decedent's heart attack came about as a result of decedent's unusual exertion in installing the battery.

No jurisdictional questions are involved.

Prior to *Town* of *Cicero* v. *Ind. Corn.*, **404** Ill. 487, the Supreme Court of Illinois drew a careful and well defined distinction concerning, heart cases under the Workmen's Compensation Act, based on whether an employee had pre-existing heart disease or not. *Fittso* v. *Ind. Corn.*, **377 Ill. 532.** Whatever the *Town* of *Cicero* case may have done to erase the previous delineation of

legal principles relating to heart cases, the fact remains that decedent in this case did not have diagnosed or known pre-existing heart disease. This case falls within the rule announced in *Marsh* v. *Ind. Com.*, 386 Ill. 11, and the cases cited therein, and *Leadley* v. *State*, No. 4137, opinion filed December 7, 1949, in which the Court held that decedent suffered an accidental injury resulting in his death within the meaning of the Workmen's Compensation Act. Claimant is, therefore, entitled to an award.

On the date of his accident, decedent was 62 years of age, married to claimant herein, but had no children under 18 years of age dependent upon him for support. Decedent's earnings in the year prior to his accident amounted to $2,864.00, and the rate of compensation is $22.50 per week.

Respondent did not pay anything for decedent's hospitalization and medical treatment from the date of his accident to the date of his death. Claimant has offered no proof as to such charges, and we can not reimburse claimant for such unknown expenses. Respondent did, however, pay decedent's full salary from the date of his accident until his death when decedent performed no services for respondent. This amounted to $92.62, and must be deducted from claimant's award.

William J. Cleary & Co., Chicago, Illinois, was employed to take and transcribe the testimony before Commissioner Tearney. Charges in the amount of $43.00 were incurred, which charges are 'customary and reasonable. An award is entered in favor of William J. Cleary & Co. for $43.00.

An award is entered in favor of claimant, Rosa Lee Brush, widow of LeRoy Brush, deceased, under Section 7 (a) (L) of the Workmen's Compensation Act for $6,-

000.00, less the payment of **$92.62** for non-productive **work,** or a net award of $5,907.38, payable as follows:

$1,308.21 less payment of $92.62 for non-productive time, or the **sum of** $1,215.59 which has accrued and is payable forthwith,

$4,691.79, which is payable in weekly installments of $22.50 per week, commencing on September 26, 1950, for a period of 208 weeks, plus one final payment of $11.79.

Jurisdiction of this case is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees.'"

(No. 4259—Claim denied.)

OPAL COLBERT, Claimant, ***vs.*** **STATE OF ILLINOIS,** Respondent.

*Opinion **filed September** 19,* 1950.

ROY A. PTACIN, .Attorney for Claimant.

IVAN A. **ELLIOTT,** Attorney General; **WILLIAM** H. **SUMPTER,** Assistant .Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be denied under.* Where claimant, an employee of the Chicago State Hospital on a regular shift between 7:00 A.M. and 3:00 P.M. and subject to emergency calls during the evening, suffered an injury at 9:00 P.M., while off duty, the Court held that though the injury occurred while she was answering a call thinking it was a call for her to report for emergency duty, this was not sufficient evidence to put her within the course of her employment, so as to bring her under the Act. ***Edmonds vs Ind. Com.,*** 350 Ill. 197 cited.

LANSDEN, J.

Claimant, Opal Colbert, brings this case under the Workmen's Compensation Act to recover from respondent for injuries sustained while she was an employee of respondent at the Chicago State Hospital operated by the Department **of** Public Welfare.

The crucial question to be decided is whether her injuries were sustained as a result of an accident arising out of and in the course of her employment.

On June 2, 1949, claimant was employed by the month in the Nursing Department. On that day she worked her regular shift from 7:00 A.M. to 3:00 P.M. At about 9:00 P.M. while claimant was off duty resting, attired in a housecoat, in quarters in the Employees' Building furnished by respondent, a coin box telephone on the floor below began to ring. Claimant went downstairs and answered the phone. The call was not for her, and she did not recognize the voice of the person calling. This coin phone was apparently installed so that employees could use it for outside personal calls. There was also a house or institutional phone nearby. The ring of the two phones was different, and by the sound each made, claimant was able to identify which was ringing.

Claimant testified that when she was off duty and on the institution grounds she was subject to emergency call at all times. She differentiated between her regular and extra duty and emergency duty. Claimant was notified the day before of the time to report for either regular or extra duty, but felt that an emergency duty call could come at any time, although she personally had never been called for emergency duty. She was not required to stay on the grounds of the institution when off duty.

The phone claimant answered was sometimes used to call employees to duty, but claimant had never been called to duty over the phone she answered.

After answering the phone, claimant started upstairs and either because she tripped on her housecoat, or slipped on the polished floor, she fell, fracturing the distal end of her right fibula.

Hospitalization and treatment were required for several weeks, all of which were furnished by respondent, but respondent never paid claimant any compensation.

Claimant contends that, because of the possibility that she might have been called to duty on the phone she answered, and because she was on the institution premises in quarters furnished by respondent, subject to emergency call, she was injured in an accident that was incidental to her employment. With this contention we cannot agree.

Although it is true that the Workmen's Compensation Act is to be liberally construed in favor of employees, claimant must bring herself within the Act and this she has not done.

In *Edmonds* v. *Ind. Com.*, **350** Ill. 197, a woman was employed by an employer who had elected to come under the Workmen's Compensation Act. At pages 198 and 199 the Court said:

"The accident from which the injuries resulted occurred on January 10, 1931. For almost two years prior to that date Mrs. Stage had been employed by Edmonds as a maid in his home at LaGrange. She had a room on the third floor of the residence, and made her home there. She was allowed Saturdays off, excepting that she cooked breakfast. She was also permitted to work for other persons, consisting principally of caring for children during the evening, and kept the extra money earned in that manner. On the evening of her injury an arrangement had been made for her to take care of some children at another home, and Edmonds' daughter had agreed to drive her over to this place. While getting ready to leave the Edmonds home, she fell down the stairs leading from the third to the second floor, suffering a painful injury to her back. At the time of the accident Edmonds was carrying compensation insurance on his household servants and employees. . . .

"The accidental injury contemplated must both arise out of and in the course of the employment. *(Becker Roofing* Co. **v.** *Industrial Corn.,* 333 111. 340; *Dietzen Co.* **v.** *Industrial Board,* 279 id. 11.) The accident in this case occurred on a Saturday evening, when Mrs. Stage was off duty, and was preparing to go out and work for someone else. It, therefore, did not occur within the period of the employment, but rather at a time expressly exempted from the period of her employment. It is true that she was injured at the home of

her employer, but this was also her home. The evidence shows that at the time of her injury she was not engaged in any work which was even remotely connected with her employment by Edmonds. Employees are not in the course of their employment, even though they may be in the general area of it, if they are not engaged in the particular duties for which they were employed or in some work incidental thereto. *(Board of Education* v. *Industrial Corn.,* 321 Ill. 23; *Danville, Urbana and Champaign Railway* Co. v. *Industrial Corn.,* 307 id. 142; *Savoy Hotel* Co. v. *Industrial Board,* 279 id. 329.) The fact that Mrs. Stage was in the home of Edmonds at the time she sustained her injury does not alter the fact that she was then off duty, and was in the act of leaving his home under an engagement of her services for hire at another place. The accident, therefore, did not arise out of and in the course of her employment."

We think that the *Edmonds* case is applicable to the instant case. The possibility of something happening on the phone, which had never happened before as far as claimant was concerned, would place on respondent a liability based on conjecture and not facts. This we are not prepared to do.

An award to claimant must, therefore, be denied.

William J. Cleary & Co., Court Reporters, Chicago, Illinois was employed to take and transcribe the testimony before Commissioner Tearney. The charges of such firm, amounting to $56.75, are customary, and an award for said amount is entered in favor of such firm.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act relating to the payment of compensation awards to State employees."

Award to claimant denied.

(No. 4260—Claimant awarded $942.75.)

ENOCH DUTTON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

ROY A. PTACIN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award. *will be made* **under.** Where claimant, employed **as** an attendant at the Chicago State Hospital, slipped on some ice and sustained a compound fracture of the fifth metacarpal of the right-hand, Court held that he was entitled to an award under the **Act** for 25 per cent loss of use of his right hand.

LANDSEN, J.

Claimant, Enocb Dutton, seeks to recover from respondent under the Workmen's compensation Act for a percentage loss of use of his right hand by reason of an injury that resulted from an accident arising out of and in the course of his employment as an attendant at the Chicago State Hospital, operated by the Department **of** Public Welfare.

No jurisdictional questions are involved, and respondent has furnished all medical treatment required in this case.

On November 25, 1949, claimant, while working some patients, slipped on an icy pavement, fell, and injured his right hand. The fifth metacarpal sustained a compound fracture.

At the time of the hearing in this case the distal ends of the fourth and fifth metacarpals were enlarged. The fourth finger was held in fixed deformity. Limitation of motion was present to a marked degree in the fourth finger, and claimant has suffered considerable loss of grip. Callous formation in the metacarpals hampered claimant's use of his hand.

From the foregoing we conclude that claimant has sustained a twenty-five per cent loss of use of his right hand. *Gray Attorney's Textbook of Medicine* (1949) Vol. 2 pars. 185.02-.05.

On the date of his accident, claimant was 41 years of age, married, but had no children under 18 years of age dependent upon him for support. Claimant had

worked for respondent only since August 1, 1949, but employees in his same category customarily earn in excess of $1,560.00 per year. His rate of compensation is, therefore, $22.50 per week.

William J. Cleary & Co., Chicago, Illinois, was employed to take and transcribe the testimony before Commissioner Tearney. Charges in the amount of $37.15 were incurred, which charges are customary and reasonable. An award is entered in favor of William J. Cleary & Co. for $37.15.

Claimant was paid full salary for three days' work he lost as a result of his accident, or the sum of $13.50. This payment for non-productive time will have to be deducted from his award.

An award is entered in favor of claimant, Enoch Dutton, under Section 8 (e) (12) of the Workmen's Compensation Act for twenty-five per cent loss of use of his right hand, or 42½ weeks at $22.50 per week, or the sum of $956.25, less overpayment of $13.50, leaving a net award of $942.75, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4262—Claimant awarded $1,500.00.)

AMALIA MILLER, ADMX., ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

BEVERLY, ODDSEN AND WEST, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* ***an award will be made under.*** Where claimant's son, employed to mow weeds with a tractor-mower by the Division of Highways, was found dead underneath the overturned tractor-mower along the highway, Court held that claimant, deceased's mother, was entitled to an award under Section (7) (c) of the Act on the basis of partial dependency.

SAME—*What constitutes partial* ***dependency under Section 7.*** Where evidence is brought forth that shows that deceased performed actual physical services on a farm owned by his mother, Court held that the labor so given by the son to his parent was the equivalent of money, and was enough proof to enable claimant to recover an award on the ground of partial dependency.

SCHUMAN, C. J.

Claim was filed herein on January 26,1950, by claimant for the death of her son, which occurred on July 8, 1949, while he was employed by the Division of Highways. The decedent was first employed on June 27, 1949 to mow weeds with his tractor-mower at $2.50 per hour. On the date of July 8, 1949, he was mowing weeds on U. S. Route No. 12 about one and one-half miles southeast of Richmond, Illinois, and at approximately 11:30 A.M. on said date he was found lying on the side of the road under the mower, with the mower and tractor turned over. A doctor was called, and after an examination pronounced him dead. His injuries consisted of a basal fracture of the skull on the lower right rear side of the head, and a broken neck. The decedent not having worked a full year, and less than 200 days, compensation would have to be figured on the minimum basis.

A claim was made by the mother on August 2, 1949. All jurisdictional requirements have been met. The mother has filed her claim on the grounds that she mas partially dependent upon the earnings of the deceased at the time of his death.

The evidence discloses that decedent during the school year attended Marquette University and had graduated therefrom; that he, along with another

brother, Conrad, and several farm hands helped his mother farm a two hundred eighty acre farm. The farm was owned by the mother; there are no mortgages on the farm, and the farm is used as a dairy farm with eighty acres in pasture and two hundred acres for crops. The mother testified that the decedent received no salary, but she gave him spending money and his clothes, etc. The elder son, Conrad, age 26, who also lived at home was paid a salary. There are two minor children, who live on the farm, and also assist in the chores. The evidence further discloses that since the son's death an additional part-time man is hired during the busy season.

The evidence showed that the claimant was the sole owner of the farm and the mother of the decedent; that the father of the decedent and the husband of the claimant had died in 1946; that the decedent had worked and helped on the farm; and that the only thing he ever got was a little spending money.

The only question before the Court in this case is whether or not the facts in evidence discloses a case of partial dependency, so as to allow the mother of the decedent an award under Section 7 (c) of the Workmen's Compensation Act.

The case of *Ritzman* v. *Ind. Com.*, **353** Ill. **34** at page 39, wherein the Court stated:

"In view of this evidence it is apparent that Earl performed substantial services with consistent regularity on the farm, and that from these services the parents received a substantial benefit. They received income from the tobacco and other farm products, which his labor helped to produce and prepare for the market. This contribution of labor was just as substantial and as beneficial to his parents as if it had been a portion of wages paid by an employer as a reward for his labor and turned over to them in cash. His labor and services on the farm were relied upon by the parents, the father being sixty-seven years old and afflicted with rheumatism. In the absence of this help to his parents it would have been necessary preceding his death, as the record shows it was necessary following his death, for them to hire a man

to aid them on the farm at two dollars per day. The labor so given by the son to his parents was the equivalent of money and answered the same purpose. A liberal construction of the Act requires us to hold that such contributions, regularly made in the form of both money and services up to the time of the, accident and for a reasonable period of time prior thereto, were sufficient to enable. the applicants to recover on the ground of partial dependency."

is very close to'the situation in this case. On the basis of the decision of this case, the Court concludes that a case of partial dependency has been established.

D. V. Sheffner has rendered a bill for $35.00 for stenographic services, which charge is found to be fair and reasonable.

An award is, therefore, entered in favor of Amalia Miller, mother of the decedent, as a partially dependent parent, in the sum of $1,500.00 to be paid to her as follows :

$1,395.00 which has accrued to September 16, 1950, for a total of 62 weeks at $22.50 a week.

$ 105.00 payable in weekly installments of $22.50, commencing on September 23, 1950 for a period of 4 weeks, and one final payment of $15.00.

An award is entered in favor of D. V. Sheffner in the amount of $35.00 for stenographic services, which is payable forthwith.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, the jurisdiction of this cause is specifically reserved for such other orders as may from time to time be necessary.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4274—Claimant awarded $303.13.)

ANNE POLLOWY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

CHUHAK AND DAHL, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award will be made under. Where claimant, a clerk in the Department of Labor, in the course of her employment slipped off of a chair and injured her left arm, Court held that she was entitled to an award under the Act for 5 per cent loss of the use of her left arm.

SCHUMAN, C. J.

The claimant, Anne Pollowy, was on November 9, 1949, an employee of the respondent in the Department of Labor, Industrial Commission, Division of Accident Reports. On November 9, 1949, she was sitting on a swivel chair doing clerical work when the chair broke causing the claimant to be thrown to the floor, which resulted in an injury to her left arm.

Claimant was examined by Dr. Alfred J. Mitchell, who stated in his report dated March 23, 1950, that the claimant had a cyst in the upper end of the left forearm, of which he did not recommend removal unless it should become progressive in character. He further stated that trauma could have resulted in a development of the cyst in the area he described. Dr. Mitchell stated that the claimant showed a 5% permanent loss of use of her left arm.

On March 6, 1950, claimant was examined by Dr. Albert C. Field, who stated that the examination showed the elbow somewhat restricted as to movement, with pain and crepitation on manipulation. He further stated that there was an irregular area, which could be palpated

over the ulna, about two inches below the olecranon process, and that it was his opinion that the condition, as he found it at the time, was permanent and caused by trauma.

The claimant's injury arose out-of and in the course of her employment by the respondent. She lost no compensable time from her employment. Her earnings in the year preceding the accident amounted to $1,868.00. The only question that is disputed is the nature and extent of her disability.

From the evidence, the Court concludes that the claimant is entitled to 5 per cent loss of the use of her left arm. Compensation therefor, computed at $22.50 per week for 11¼ weeks, is $253.13. In addition thereto, the claimant expended the sum of $50.00 for medical services, which were required as a result of the injury, making a total amount due her of $303.13.

William J. Cleary & Co. has rendered a statement for stenographic services in the amount of $40.08, which charge is found to be fair and reasonable.

An award is therefore entered in favor of the claimant in the amount of $303.13, all of which has accrued and is payable forthwith.

An award is entered in favor of William J. Cleary & Co. for stenographic services in the amount of $40.08, which is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4276—Claimant awarded $6,000.00.)

LEAH G. KING, WIDOW, ET AL, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

RUSSELL J. TOPPER, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where* an award will be made under. Where claimant's deceased, employed as a Supervisor in the Unemployment Coinpensation Office, while enroute to Springfield for an office business conference, hit a truck on the highway and died as a result, Court held that his widow, the claimant, was entitled to an award under the Act.

SCHUMAN, C. J.

Claim was filed herein on March 6, 1950, by Leah G. King for the death of her husband, Merrill B. King, as a result of injuries sustained in an accident on January 20, 1950.

There are no jurisdictional questions raised and it is admitted by the respondent that proper notice was given, and within the time as provided by statute.

The decedent, Merrill B. King, was employed by the Department of Labor of the State of Illinois as an Unemployment Compensation Offices' Supervisor. King was Supervisor of area VII, which included eight local offices, serving thirty counties in central and southeastern Illinois. Among these local offices are those at Decatur, his headquarters; Springfield, Jacksonville and itinerant points, including Winchester, Illinois.

On January 20, 1950, decedent was fifty-two (52) years old, married to claimant and living with her. She had no dependent children, and was dependent on him for her support. His earnings at that time were $481.00 per month, and in the year preceding the injury he had received more than $5,000.00 as salary.

The evidence and the departmental report discloses the following. On January 20, 1950, at approximately 7:10 o'clock P.M., decedent was enroute from Jacksonville to Springfield, Illinois, for a business conference with Mr. J. A. Fleming, Unemployment Compensation OfficeManager at Springfield, which conference had been arranged the previous day. The decedent, while driving east on Illinois Highway No. 36 at a point in the 600 block of Morton Avenue in the City of Jacksonville, Illinois, struck the rear end of a large transport truck parked on the south side of said street. Both the truck and car had lights burning. The impact attracted the attention of Dale Bond, who was some distance west of the scene of the accident, and he immediately went to the car to render assistance. He found Mr. King slumped in the seat, and he immediately felt his pulse, which he found to be rather strong. The witness then called for the police and an ambulance. When the ambulance arrived, he noticed that the pulse was either weak or entirely gone. The decedent was taken to Our Saviour's Hospital in Jacksonville, and apparently after death was seen by Dr. Paul B. Hartley, who stated that in his opinion King died from a crushing injury to the chest. No post mortem was performed at that time.

Later on April 18, 1950, the body of decedent was exhumed, and an autopsy was performed at the F'essant Funeral Home at Bridgeport, Illinois, by Dr. Dennis B. Dorsep and Dr. George Y. McClure, pathologists. Dr. Dorsey was of the opinion that death was caused by a crushing injury to the anterior chest wall with trauma to the base of the heart, causing cardiac arrest. Dr. McClure stated that there was a sudden death as a result of cardiac arrest, caused by a crushing blow to the chest directly over the heart.

It was admitted by the respondent, through the Department of Labor, in the Departmental Report that the decedent was on official business, and in traveling status at the time of the accident, and that subsistence mileage allowances were in effect until his return to his official station of assignment at Decatur.

From the undisputed facts in this record, there could only be one conclusion in this case, and that is that the claimant is entitled to an award for the death of her husband, as a result of accidental injuries he received while in the course of his employment for the respondent on January 20, 1950.

The Court finds that Hugo Antonacci has rendered a statement for stenographic services in the amount of $70.00, which charge is found to be fair and reasonable.

An award is, therefore, made in favor of Leah G. King, widow of Merrill B. King, deceased, in the amount of $6,000.00, to be paid to her as follows:

$765.00 which has accrued to September 15, 1950, and the balance of $5,235.00, payable in weekly installments of $22.50 each week for 232 weeks, commencing on September 22, 1950, with an additional final payment of $15.00.

All future payments are subject to the terms and conditions of the Workmen's Compensation Act of Illinois.

The jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

An award is also entered in favor of Hugo Antonacci for stenographic services in the amount of $70.00, which is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4277—Claimant awarded $650.96.)

KEITH PORTER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion fled September 19, 1950.

MCCOLLUM AND MCCOLLUM, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an ***award will be made under.*** Where claimant, employed as a highway section man by the Department of Public Works and Buildings, had his hand caught in a gravel mixer that was being used preparatory to the laying down of gravel in order to patch up broken pieces of pavement surfaces, Court held that he was entitled to an award under the Act for a 50 per cent partial, permanent loss of use of the first and third finger of the right hand.

DELANEY, J.

On March 8, 1949, the claimant, Keith Porter, employed by the respondent in the Department of Public Works and Buildings, Division of Highways, as a Highway section man, was assigned to mix gravel and bituminous material, which was to be used in patching broken places in pavement surfaces. This was done by first drying the gravel in a power-driven rotary drum heated mixer, and after the gravel was properly dried, the bituminous material was added and mixed with the gravel. The work was being done at a Division storage lot approximately one mile west of Flora in Clay County.

At approximately 1:00 P.M., a charge of gravel was being dried in the mixer, when the claimant, Keith Porter, reached into the mixer to secure a sample of the gravel to test for dryness. As he reached into the mixer, the revolving blades caught his right hand, and crushed it between the mixer drum and one of the blades.

After releasing his hand, Mr. Porter went to Dr. E. D. Foss, Flora, Illinois, for treatment, and reported his injury to the Division the same day.

On March 28, **1949,** Dr. Foss made the following report:

"Nature of Injury—Wound, lacerated, multiple, hand, right, severe. Treatment—Cleansing, irrigation and primary closure of the lacerations with non-absorbable suture material following debridement. Penicillin in oil, daily, and tetanus antitoxin administered. Sterile dressings and immobilization of the hand. As of this date, wounds are healing nicely except for small area of slough near 4th finger that will not demand skin graft. Some edema and stiffness of hand. Finger exercises to be started. (Tendons to **2** and 4 fingers not lacerated but exposed, causing stiffness.) X-rays—Negative for fractures 'or dislocation. Estimated date of discharge—April **15,** 1949. Estimated date patient able to work—Doing some work now, What permanent disability do you expect?—Possibility of some finger stiffness. Otherwise none."

Dr. Foss made a subsequent report on April **14, 1949**:

"Treatment carried out under general anesthesia. Date patient was discharged—April 14, 1949. Date able to work—App. April 1, 1949. Permanent disability—Some stiffness of fingers of right hand at present with slight edema which should resolve or the most part at least with use of the fingers and hot soaks. All wounds completely healed. Temporary disability when discharged—None."

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and claim for compensation was made within the time provided by the Act. The accident arose out of and in the course of claimant's employment. No claim is made for temporary total disability, nor for medical expenses, which were paid by the respondent. Claim, however, is made for total permanent disability.

Claimant was **30** years of age, married, and had two children under 16 years of age dependent upon him for support at the time of the accident.

He was first employed by the Division on March *3,* 1949, as a Highway section man at a salary of $203.00 a month. His classification and salary rate remained the same, and he worked continuously from the date of his employment until his injury on March 8, **1949.** Other

Division employees, working in the same classification as Mr. Porter, worked continuously through the year, and earned $2,236.00 a year. His compensation rate is, therefore, the maximum of $15.00; since he had two children under the age of 16 years dependent upon him for support at the time of the accident, the weekly maximum rate is increased to $16.00 per week. The injury, having occurred after July 1,1947, this must be increased 30 per cent, making a compensation rate of $20.80 per week.

From the medical testimony, and the personal observations of the Commissioner of this Court, we are of the opinion that, as a result of the accident on March 8, 1949, claimant has suffered a 50 per cent partial, permanent loss of use of the first finger of his right hand, being 20 weeks; and a 50 per cent partial, permanent loss of use of the third finger of his right hand, being 12½ weeks.

An award is, therefore, made in favor of claimant, Keith Porter, for the sum of $416.00 for the first finger of right hand, and for the sum of $260.00 for the third finger of right hand, or a total of $676.00. The respondent has paid the claimant the sum of $25.04 as an overpayment for non-productive time from March 9, 1949 to March 15, 1949. This amount must be deducted from the claimant's award. This would make a total award due claimant of $650.96, all of which has accrued and is payable forthwith.

The testimony at the hearing before Commissioner Frank Summers was taken and transcribed by Marian McKnelly, who has submitted a statement for her services in the amount of $10.00, payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4281—Claimant awarded $1,278.29.)

CHARLES K. MOTZ, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

GORDON E. WINDERS, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award will be made under. Where claimant, employed as a highway section man's helper by the Division of Highways, while in the course of his employment and repairing a motor of a truck owned by the Department, caught his right thumb under the hood of the truck and suffered a fracture and dislocation of said thumb, and later necessitated an amputation thereof, Court held that he was entitled to an award under the Act for the complete and permanent loss of the right thumb.

LANSDEN, J.

Claimant, Charles K. Motz, proceeds under the Workmen's Compensation Act to recover from respondent for the loss of his right thumb, as a result of an accident which arose out of and in the course of his employment as highway section man's helper in the Division of Highways, Department of Public Works and Buildings.

On April 18, 1949, claimant and his immediate superior were unable to start the truck assigned to them, which truck was stored at a leased lot in Wataga, Knox County, Illinois. So that work could be done on the motor, the hood was removed. While replacing the hood, it slipped, and caught claimant's right thumb between it and the truck body.

Although his thumb pained him, claimant worked two days, but then saw a doctor who, by X-Rays, discovered a dislocation and fracture of the distal phalange. Between the time of the injury and the first examination of the thumb by a doctor, a traumatic arterial occlusion or thrombosis developed with gangrene in the distal phalange. Although efforts were made to save the thumb,

not only the distal phalange but also the proximal phalanges became seriously damaged by the gangrene, especially the tendon structures, and the soft and surrounding tissues. It became necessary to amputate the thumb on May 21, 1949, leaving approximately one-half to one-third of the proximal phalange.

No jurisdictional questions are involved, and respondent has paid for all medical treatment and hospitalization required.

.In 1947, Section 8 (e) (6) of the Workmen's Compensation Act was amended to read as follows:

> "The loss of the first or distal phalanx of the thumb or of any fingr shall be considered to be equal to the loss of one-half of such thumb or finger and the compensation payable shall be one-half of the amount above specified; provided that the amputation of the entire distal phalanx of a thumb or finger proximal to the distal joint .at the reasonable point of election for amputation of such phalanx shall be considered to be the loss of one phalanx only."

Such amendment apparently negatives the effect of *Chicago, Wilmington & Franklin Coal* Co. v. *Ind. Corn.*, 399 Ill. 76, which was based on the section as it read prior to the **1947** amendment.

Respondent apparently predicated its defense on the above quoted section, but the testimony of respondent's doctor, and X-Rays introduced in evidence rendered such section inapplicable. The point of election for amputation was made not for the purpose of determining where the distal phalange should be severed, but where the proximal phalange should be severed to leave the remainder of the thumb unaffected by gangrene. Claimant lost by amputation not only the distal phalange, but also the proximal phalange, and is, therefore, entitled to an award under Section 8 (e) **(1)(7)** for the permanent and complete loss of his right thumb. This case is very close on the facts with *Aeschleman* v. State, No. 4153, opinion

filed July 8, 1949, and we follow such case in holding claimant is entitled to an award.

On the date of his accident claimant was 64 years of age, married, but had no children under 16 years of age dependent upon him for support.

In the year prior to his accident, claimant earned from respondent $2,160.00, and his rate of compensation is, therefore, $19.50 per week.

Claimant was totally disabled from April 20 to and including June 26, 1949, or nine and five-sevenths weeks. For the period of temporary total disability claimant was paid $276.14 when he should have been paid only $189.43. He was thus overpaid $86.71.

Martha M. Tracy, Galesburg, Illinois, was employed to take and transcribe the testimony before Commissioner Wise. Her charges amounting to $19.50 are fair and reasonable, and an award is entered in her favor for such amount.

An award is entered in favor of claimant, Charles K. Motz, under Section 8 (e) (1)(7) of the Workmen's Compensation Act for 70 weeks at $19.50 for the complete and permanent loss of his right thumb in the amount of $1,365.00, from which should be deducted the overpayment of $86.71, leaving a net award of $1,278.29, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4285—Claimant awarded $72.00.)

PHILLIPS PETROLEUM CO., A CORP., Claimant, vs. STATE OF ILLINOIS, Respondent.

*Opinion **filed September 19, 1950.***

BLUM AND JACOBSON, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; **C. ARTHUR NEBEL,** Assistant Attorney General, for Respondent.

MATERIALS AND SUPPLIES—*when claim will be* allowed for ***payment after appropriation has lapsed.*** Where claimant, manufacturer of oil products, produced sales tickets for products which it had furnished the Division of Highways, but presented them for payment after the appropriation from which these invoices were payable had lapsed, although a sufficient balance remained in the appropriation at the time it lapsed, the claim will be allowed where it was made within a reasonable time.

SCHUMAN, C. J.

The claimant, Phillips Petroleum Company, a corporation, furnished the Division of Highways, Bureau. of Construction of the State of Illinois, certain products on June **22, 1949,** amounting to the sum of $27.63; and the Department of Maintenance of the State of Illinois certain products from March **21** through August **31, 1949,** all as listed per exhibits attached to their **claim,** totalling $75.50.

The Departmental Report indicates that of this total **$3.50** was paid direct to the individual service station, leaving the amount **of** $72.00, which is due.

It was stipulated between the parties that the materials in the amount of $72.00 were furnished to the State, but were not paid because of the automatic date of lapse of appropriation.

For the reasons stated in Case No. **4299,** The Haloid Co., a Corp., an award is entered in favor of the claimant in the sum of $72.00.

(No. 4286—Claimant awarded **$721.70.)**

DEWEY E. STOWE, Claimant, ***vs.*** **STATE OF ILLINOIS,** Respondent.

Opinion fled September 19, 1950.

DEWEY E. STOWE, Claimant, pro se.

IVAN A. **ELLIOTT,** Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, employed as a highway section man by the Department of Public Works and Buildings, was injured when the cutter bar on the power mower that he was operating slipped out, and, in attempting to repair it **his** right index finger was caught and the third phalanx thereof fractured, **Court** held that claimant was entitled to an award under Section 8 (e) of the **Act** for the complete and permanent loss of the first or index finger of the **right** hand.

LANSDEN, **J.**

Claimant, Dewey E. Stowe, seeks to recover from **re**spondent for the loss of his right index finger as **a** result of an accident arising out of and in the course of his employment as a highway section man in the Division of Highways, Department of Public Works and Buildings.

On June 6, **1949,** claimant was operating a power mower along State Aid Route No. 18 in-Iroquois County. The cutter bar on such mower slipped out of operating alignment, and, while trying to place the cutter bar in operating position, the sickle in the cutter bar moved, catching claimant's right index finger.

The soft tissues of such finger were severely lacerated, all tendons thereof were severed, and the third phalanx of the finger was fractured. On July **11, 1949,** after the splint 'was removed, claimant, who had been instructed by his attending physician to do so, was forcibly exercising his finger, and, in so doing, the sutured .tendons were torn apart, and the finger refractured. **As** a 'result of this therapeutic misfortune, claimant's right index finger became deformed, swollen, pain-

ful in some portions, numb in others, and useless. In fact, the finger interfered with the function of claimant's right hand as a whole.

On August **24,** 1949, claimant's right index finger was amputated at its base where said finger joined the palm of his hand, or in medical terminology at the metatarsophalangeal joint.

No jurisdictional questions are involved, and claimant is entitled to an award under Section 8 (e) *(2)* of the Workmen's Compensation Act for the permanent and complete loss of his first or index finger. Respondent has furnished and paid for all medical treatment and hospitalization required.

On the date of his injury claimant was 50 years of age, married, but had no children under 16 years of age dependent upon him for support.

Claimant had worked for respondent only since February 18,1949, at a salary of $203.00 per month, and until. his injury had received $729.35. However, under Section 10 of the Workmen's Compensation Act, claimant is held to have earned considerably in excess of $1,560.00 per year, and his rate of compensation is, therefore, $19.50 per week.

Claimant was totally disabled from the date of his injury to and including June 19, 1949, on August 15, 1949, and from August 24 through September **11,** 1949. At all other times claimant performed services for respondent, and was paid full salary. For the 33 day period of temporary total disability claimant was paid $150.23 when, he should have been paid only $91.93. He was thus overpaid $58.30.

Juanita O. Craig, Danville, Illinois, was employed *to* take and transcribe the testimony before Commissioner Wise. Her charges amounting to $21.30 are fair

and reasonable, and an award is entered in her favor for such amount.

An award is entered in favor of claimant, Dewey E. Stowe, under Section 8 (e) (2) of the Workmen's Compensation Act for 40 weeks at $19.50 for the complete and permanent loss of his first or index finger in the amount of $780.00, from which should be deducted the overpayment of $58.30, leaving a net award of $721.70, all of which has accrued and is payable forthwith.

The award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4288—Claimant awarded $7,500.00.)

BESSIE MARIE JOPLIN, 'ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

Supplemental opinion filed April *10*, 1951

PAUL R. GOLDMAN AND IRVING M. GREENFIELD, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant's deceased, who was employed by the Department of Public Welfare at the Kankakee State Hospital as a fireman in a supervisory capacity, was found dead underneath approximately seven tons of coal, and there was testimony that his work required him to be at the place of the accident, Court held that claimant, his widow, was entitled to an award under the Act.

SAME—*modification of a previous award.* Where the Court had previously given an award to Bessie Mane Joplin, widow of a deceased State employee, and to his two minor children, and later the widow remarries, the Court stated it had the jurisdiction and power to modify the award and make the remainder payable to Leslie Daniel Joplin and Margaret Ella Joplin, minor children of Leslie Earl Joplin, deceased, by and through their next friend, natural guardian, and mother, Bessie Marie Wielgus.

SCHUMAN, C. J.

Complaint was filed herein on April **3,** 1950, by Bessie Marie Joplin, widow of Leslie Earl Joplin, on behalf of herself as surviving widow, and her two minor children, for the death of the said Leslie Earl Joplin, which occurred on March 10, 1950.

No jurisdictional questions are involved.

The decedent was employed by the Department of Public Welfare at the Kankakee State Hospital as a fireman in a supervisory capacity, and was transferred from the Jacksonville State Hospital to the Kankakee State Hospital on September 19, 1949. His salary was **$355.00** per month, and his earnings in the year preceding death were above the maximum.

On March 10, 1950, the decedent reported for **work** at the hospital on the afternoon and evening shift, and at approximately 5:45 o'clock P.M. he was found in the coal bunker covered with coal with only one foot sticking out of the coal pile. His body was recovered from beneath approximately seven tons of coal, and he was dead. Mr. Alfred Bergner, Chief Engineer of the hospital, testified that decedent worked under his supervision and direction; that it was the duty of decedent to supervise the men under him; and that his work required him to **be** at the place of the accident. There were no eye witnesses to the accident. Mr. Bergner and other men reached him shortly after the accident.

On date of March 10, 1950, decedent was forty-one (41) years of age, married, and had two children under the age of sixteen years dependent upon him for support, to-wit, Leslie D. Joplin born January **7,** 1935, and Margaret Ella Joplin, born December **11,** 1937.

Claimant is, therefore, entitled to an award in the amount of $7,500.00.

William J. Cleary & Co. has rendered a statement for stenographic services in the amount of $29.35, which charge is found to be fair and reasonable.

An award is, therefore, entered in-favor of the claimant, Bessie Marie Joplin, widow of Leslie Earl Joplin, deceased, and Leslie Daniel Joplin and Margaret Ella Joplin, minor children of Leslie Earl Joplin, deceased, in the sum of $7,500.00. Of this amount the sum of $648.00 has accrued to September 15, 1950, and is payable forthwith. The remainder amounting to the sum of $6,852.00 is payable in weekly installments of $24.00 per week beginning September 22, 1950 for a period of 285 weeks, with an additional final payment of $12.00.

An award is entered in favor of William J. Cleary & Co. for stenographic services in the amount of $29.35, which is payable forthwith.

All future payments are subject to the terms and conditions of the Workmen's Compensation Act of the State of Illinois.

The jurisdiction of this case is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

SUPPLEMENTAL OPINION

SCHUMAN, C. J.

In an opinion heretofore filed in this cause on September 19, 1950, an award was entered in favor of the

claimant, Bessie Marie Joplin, widow of Leslie Earl Joplin, deceased, and Leslie Daniel Joplin and Margaret Ella Joplin, minor children of Leslie Earl Joplin, deceased.

A petition to modify the opinion and award was filed on the ground that the widow had remarried. A Motion to Dismiss the Petition to Modify the Opinion was filed on behalf of the said Bessie Marie Joplin, and said minor children. The said Bessie Marie Joplin, and the said minor children have also filed a Petition for Increase of Compensation due to vexatious delay. The matters above stated in this paragraph were argued orally before the Court.

The Court is requested to interpret Paragraph (a) of Section 7 of the Workmen's Compensation Act with reference to the rights of the widow, now remarried, to compensation in the event the two minor children should die before the award is fully paid.

There can be no question that the Court, under the Compensation Act, has the authority to retain jurisdiction to modify the award from time to time with respect to the persons to whom shall be paid the amount of said award remaining unpaid at the time of the modification.

There being no dispute as to the remarriage of the widow, the award will be modified. However, the Court retains jurisdiction of this cause to determine the rights of the widow, if any, in the event the said minor children should die before the full award is paid. The Court, specifically finds that at the time of the death of the said Leslie Earl Joplin, the widow, Bessie Marie Joplin, and the minor children, Leslie Daniel Joplin and Margaret Ella Joplin, were members of the class defined under said Paragraph (a) of Section 7.

The unpaid balance under the award is in the amount of $6,708.00. The Petition, under paragraph **(k)** of Section 19 of the Compensation Act, is denied.

The award heretofore entered in this cause is here: by modified as follows:

The balance of the award of $6,708.00 is payable to Leslie Daniel Joplin and Margaret Ella Joplin, minor children of Leslie Earl Joplin, deceased, by and through their next friend, natural guardian, and mother, Bessie Marie Wielgus; and said sum is payable as follows:

(a) The sum of $562.29, which has accrued to April 10, 1951, is payable forthwith.

(b) The balance of $6,145.71 is payable in **256** weekly installments of $24.00 commencing April 17, 1951, and one final payment of $1.71.

Jurisdiction of this award is hereby reserved for the purpose of determining to whom the balance of the award should be paid in the event that said minor children should die leaving a balance of said award unpaid, and for such further orders as may from time to time be necessary.

(No. 4294—Claimant awarded $150.30.)

GEORGE BAIN, Claimant, ***vs.*** **STATE OF ILLINOIS,** Respondent.

Opinion filed September 19, 1950.

MARK C. KELLER, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—when an award will be made under. Where claimant, employed as an operating engineer at the Dixon State Hospital by the Department of Public Welfare, injured his back causing a 5th lumbar slipped disc condition, and said injury took place while claimant was lifting and replacing the end-gate of a truck, Court held claimant was entitled to an award under the Act for necessary medical and hospital expenses, and **also** for traveling expenses incidental thereto.

SCHUMAN, C. J.

George Bain, claimant, employed by the Department of Public Welfare as an operating engineer at the Dixon State Hospital, was injured in an accident at said hospital on May 2,1949. Notice of the accident was given immediately to his supervisor, partial medical services were afforded him, and compensation was paid by the department. The claim was filed on April 20, 1950. It was stipulated that the accident arose out of and in the course of his employment, and all statutory requirements have been met.

In his complaint, claimant asked an allowance for temporary total disability, and for reimbursement for certain doctor and hospital services incurred by him, and for certain necessary trips made to Chicago, Illinois.

The facts disclose that on May 2, 1949, while claimant was working on or about a truck, the heavy end-gate fell down, because the iron pin holding it in place became loose and fell out, and in lifting and replacing the end-gate, which weighed approximately 200 pounds, claimant twisted and injured his back causing a 5th lumbar slipped disc condition. He was first attended by the doctors at the Dixon State Hospital, and later at the Illinois Research Hospital where an operation was performed on his back. Claimant has made a good recovery from the operation, and, at the time of the hearing, stated that he had returned to **work** on July **17, 1950;** that he was performing most of his duties ; and, that his back condition was steadily improving. He is making no claim for permanent disability or partial disability **or** specific loss.

On the date of the accident claimant **was** forty-six **(46)** years of age, married, but had no dependent chil-

dren. His earnings in the year preceding injury were $3,660.00.

Claimant was totally disabled from May 2, 1949 to July 17, 1950, the date he returned to work. During that period he was paid one month's full salary of $305.00, 60 per cent of $305.00 for one month, and 60 per cent of $355.00 for four months, making a total payment during his period of disability of $1,340.00. He was given a pay increase effective July 1, 1949 to the higher amount. Claimant was totally disabled for a period of sixty-two and five sevenths (62 5/7) weeks. He should have received in compensation for said period, at the rate of $19.50 per week, the total sum of $1,222.93, and has, therefore, received all compensation for temporary total disability.

Claimant expended for doctor and hospital services the following: Drs. Charles H. and Robert T. Lesage, $33.00; Dixon Public Hospital, $44.30; Illinois Research Hospital, $11.50. In addition, it was necessary that he make six trips from Dixon to Chicago, and he is asking for bus fare and cab fare on these trips at $10.25 each, making a total of $611.50.

The Court finds that Helen Heckman has rendered stenographic services in the amount of $26.25, which charge is found to be fair and reasonable.

An award is, therefore, entered in favor of the claimant, George Bain, in the amount of $150.30.

An award is also entered in favor of Helen Heckman for stenographic services in the amount of $26.25, which is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4299—Claimant awarded $541.29.)

THE HALOID COMPANY, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed *September 19, 1950.*

HOFF AND HOFF, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

MATERIALS AND SUPPLIES—*when claim will be allowed for payment after appropriation has lapsed.* Where claimant furnished supplies to the Division of Vital Statistics and Records, and presented bills for payment within a reasonable time, but they were not cleared before the lapse of the appropriation in the 65th Biennium, Court held that claimant was entitled to an award.

SCHUMAN, C. J.

The claimant, The Haloid Company, a corporation, on various dates, commencing with the 4th day of May, 1949 to and including the 27th day of May, 1949, furnished supplies to the Division of Vital Statistics and Records of the State of Illinois in the amount of $541.29.

A report has been filed by the Director of Finance that the material was furnished as claimed by the claimant, and received by the Department, but payment was not cleared before the lapse in appropriation in the 65th Biennium. Claimant comes before this Court upon stipulation waiving brief and argument.

By the repeated decisions of this Court, it has been held that where the facts are undisputed that the State has received supplies ordered by it in accordance with due authority, and has used the same, and, that the bill therefor was not paid before the lapse of the appropriation out of which it could have been paid, an award for the amount may be made. (*Shell Petroleum* Co. v. *State,* 7 C.R.R., 224; Shonkwiler 11 C.C.R. 602, and other cases.)

An award is therefore entered in favor of the claimant, 'and allowed in the amount of $541.29.

(No. 4318—Claimant awarded $522.00.)

COUNTY OF WILL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 19, 1950.

JOHN IRVING PEARCE, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WRITS OF HABEAS *Cowus— where county will be reimbursed for expense of Writs of Habeas Corpus filed in its jurisdiction.* Where the claimant has the Illinois State Penitentiary located within its borders, and Writs of Habeas Corpus were filed in the Courts by inmates, who were not residents of the county nor were not committed by its Court, an award will be made **for** necessary expenses of its officers incurred in such Habeas Corpus cases.

LANSDEN, J.

A special statute, Ill. Rev. Stat. **1947,** Chap. 65, Secs. 37-39, permits a county, within the borders of which is located a State penal or charitable institution, to bring an action in this Court to recover from respondent the necessary expenses incurred by it or its officers by reason of habeas corpus proceedings therein' by or on behalf of inmates of such institution, who were not residents of the county at the time of commitment, and who were not committed by any court of such county.

. Proceeding under such statute, claimant, County of Will, State of Illinois, within the borders of which is located the Illinois State Penitentiary, seeks to recover from respondent the sum of $522.00.

Claimant has previously been granted two awards in similar cases under the same statute. *County of Will* v. *State,* 18 C.C.R. 189, and No. **4218,** opinion filed May **9,** 1950. Those cases and *County of Randolph* v. *State;*

No. 4157, opinion filed February 14, 1950, control this case, and are authorities for an award in this case.

A stipulation of facts has been filed herein, and is hereby approved.

The stipulation discloses that claimant has complied with all statutory prerequisites to recovery. From March 31, **1949,** through October **27,** 1949, sixty-seven petitions for Writs of Habeas Corpus were filed in the Circuit Court of Will County, Illinois, by inmates of the Illinois State Penitentiary, who were not residents of the County of Will, or committed by any court therein. In each case the Clerk of the Circuit Court would be entitled to a fee of $5.00, Ill. Rev. Stat. 1947, Chap. 53, Sec. 31, or a total of $335.00. In addition, in some of these cases the Clerk furnished photostatic copies of court records and documents to petitioners, and, in others, including six wherein petitioners paid the filing fee, a photostatic copy of the petition was furnished to the Attorney General of the State of Illinois. The cost of such photostatic copies amounted to $187.00.

Claimant seeks no other reimbursable expenses, but is entitled to an award of the full amount sought.

An award is, therefore, entered in favor of the County of Will, State of Illinois, in the sum of $522.00.

(No. 4038—Claim denied.)

CHARLOTTE LAWRENCE, ADMX., ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion filed** October* **13,** *1950.*

KRUSEMARK AND KRUSEMARK, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, **for** Respondent.

WORKMEN'S COMPENSATION *ACT—when an award will be denied under because of failure to show a causal connection.* Where claimant's deceased, employed as a common laborer by the Division of Highways, fractured **his** tibia, when he was struck by a timber projecting from a State Highway truck, and twenty-two **(22)** months later he died from a cerebral hemorrhage, complicated by hypertension, Court held the claimant was not entitled to an award under the Act because of the failure of the claimant to prove a causal connection between the accident sustained by the claimant's deceased and his later death.

SAME—When *a claim for specific loss abates as a result of death.* where claimant dies prior to the detetmination of specific loss, the claim abates, Section 8 (e) 19 of the Act governs; ***Neumann* v. *Ind. Corn.,*** 396 **Ill. 224,**

LANSDEN, **J.**

On March 28, **1946,** George **S.** Lawrence was employed by respondent as a common laborer in the Division of Highways of the Department of Public Works and Buildings. On that day, while so employed, he was struck by a timber projecting from a State Highway truck below the left knee fracturing the tibia.

Mr. Lawrence was hospitalized until April 20, **1946,** and after several examinations by respondent's doctors it was found that he was able to return to work on May **19,** 1947. Mr. Lawrence did not, however, return to work until October, **1947,** but from May to October he worked for about three weeks driving a tractor on a farm ten to twelve hours a day.

From the record, we conclude that Mr. Lawrence was able to return to work on May **19, 1947,** and the record further discloses that he was paid compensation for temporary total disability from March **29, 1946,** through May 19, **1947,** at the rate of $18.00 per week, or the sum of $1,072.24.

Respondent furnished and paid for all medical, surgical and hospital services required to cure and relieve Mr. Lawrence from the effect of his accidental injury, which arose out of and in the course of his employment.

On September **16, 1947,** Mr. Lawrence filed a claim in this Court alleging that he was entitled to additional compensation by reason of the injuries sustained as the result of his accident, and a partial hearing of this case was held in December, **1947.** Mr. Lawrence at that time was again working for the Division of Highways, and had worked since the middle of October, **1947,** and he continued to work until January 25, **1948,** upon which day he died at his home after attending to the furnace therein as a result of a cerebral hemorrhage, complicated by hypertension.

It is apparent from the record that Mr. Lawrence's claim could only have been predicated on a specific loss of use of his left leg, he neither being totally nor permanently disabled, nor being entitled to compensation for any permanent partial disability, since his earnings after he returned to work for respondent were at a greater rate than prior to his accident.

This claim for specific loss abated as a result of the death of Mr. Lawrence, Section 8 (e) **19** of the Workmen's Compensation Act, since such claim for specific loss had not been determined at the time of his death. This phase of the case is controlled by *Neumann* **v.** *Ind. Corn.,* **396** Ill. **224.**

After leave first had been requested and obtained, an amended complaint was filed herein on May **12, 1949,** substituting Charlotte Lawrence, Administratrix of the Estate of George S. Lawrence, Deceased, as claimant, and the amended complaint was predicated on the fact that the death of George S. Lawrence on January **25, 1948,** was attributable to the injury he received on March 28,1946, and that claimant was entitled to a death award.

A doctor testified in behalf of claimant that Mr. Lawrence evidenced marked hypertension after his acci-

dent, such hypertension becoming progressively more acute with the result that he finally died as a result thereof. We are not impressed by such testimony, since such doctor was vague, evasive and uncertain. Although he had been the attending physician of Mr. Lawrence in his lifetime, he constantly stated that Mr. Lawrence had sustained the fracture of the fibula of his left leg, when it is undisputed that the fracture was to the tibia. Such doctor submitted six written reports to respondent within approximately one year after Mr. Lawrence was injured, and in such reports there was no mention made of the fact that Mr. Lawrence evidenced hypertension. This doctor blandly explained such omission on the ground that the information was not requested by the form for reporting, or by any representative of respondent. For such doctor to attach such importance to hypertension, as he did at the last hearing in this case, without ever previously mentioning it, is to tax much too heavily the credulity of this Court.

A doctor testified for respondent, who obviously was much more qualified in the field of hypertension than was claimant's doctor, having observed not less than 2,000 cases, and this doctor, in answer to questions propounded by claimant's attorney, categorically stated that there would be evidence of hypertension after such injury, but that it would tend to diminish in intensity thereafter.

We, therefore, conclude that there was no causal connection between the accident sustained by George S. Lawrence on March 28, 1946, and his death on January **25, 1948,** and we are, therefore, not justified in making any award in this case.

Sarah C. Boris, Joliet, Illinois, was employed to take and transcribe the testimony at the hearings before

Commissioners East and Wise. She has rendered a bill in the amount of $83.25, which amount is reasonable and customary. An award. is, therefore, entered in favor of Sarah C. Boris in the amount of $83.25.

An award to Charlotte Lawrence, Administratrix of the Estate of George S. Lawrence, Deceased, is denied.

This award is subject to the approval of the Governor. Ill. Rev. Stat. **1949,** Chapter 127, Section 180.

(No. 4134—Claimant awarded $2,500.00.)

FRANK HERRIN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 13, 1950.

EMMET M. MCDONALD AND PAUL DENVER, Attorneys for Claimant.

IVAN **A.** ELLIOTT, Attorney General; WILLIAM H. SUMPTER AND WILLIAM **J.** COLOHAN, Assistant Attorneys General, for Respondent.

NEGLIGENCE—*State liable* for ***failure to*** *light* ***a*** concrete *drop box inlet located on* ***a*** *State highway.* Where claimant stepped out of his car that was being driven on a State highway at night in order to relieve the other driver, and fell into a concrete drop box inlet and suffered severe personal injuries, and the proof showed, that the State had notice of the defective condition and failed to put flares or other warning devices there, and that claimant was not guilty of contributory negligence, Court held that he was entitled to an award under Section 8 (c) of the Court of Claims Act.

LANSDEN, **J.**

Claimant, Frank Herrin, seeks to recover from respondent for its negligence.

On July 19,1948, just before midnight, claimant was riding in, and his brother-in-law, Charles Creveling, was driving an automobile traveling in a westerly direction along 95th Street, Chicago, Illinois, just west of the intersection of such street with Southwest Highway (Route **7).** 95th Street, west of Southwest Highway, is a part of

the State Highway System, and respondent is responsible for its total maintenance.

At a point 150 feet west of the intersection above referred to, Mr. Creveling stopped the automobile six feet from the north edge of the 20 foot pavement and on the 10 foot shoulder so that he and claimant could change places as operator of the vehicle.

Claimant stepped out of the right front door of the vehicle, intending to walk around behind the car to get into the driver's seat, but took only a few steps when he fell into a concrete drop box inlet, three feet square and five feet deep, the two-section concrete cover of which had been broken in and rested at the bottom of the drop box.

The drop box had been installed so as to permit surface water to be carried by a culvert under 95th Street to its south side, and was an integral part of the highway as originally constructed.

No signs, flares or flags warned claimant of the location of the drop box, or the fact that its cover had been broken. Weeds and grass partially; but effectively, concealed the drop box from claimant's View in whatever small amount of light there was at midnight. Neither the lights of passing vehicles, nor those of claimant's automobile, illuminated the area of the drop box.

It is conceded that the concrete cover of the drop box had been broken and fallen in for so long a period of time that respondent knew, or should have known, of its condition.

Claimant could not be charged with contributory negligence, since he fell into the hole before he could have realized the impending danger, and he had a right to be where he was, and to do what he was doing.

Claimant is, therefore, entitled to an award, since respondent's negligence has been definitely established by the greater weight of the evidence. *Toler* v. *State*, 16 C.C.R. **315;** *Dockry* v. *State,* 18 C.C.R. 177; *Rickelman* v. *State,* No. 4195, opinion filed October 20, 1949.

After the accident, claimant went to the Little Company of Mary Hospital, Evergreen Park, Illinois; where he was hospitalized for three weeks. He was unable to work for two months, having been employed as a bus driver for Suburban Transit Bus Lines at $10.00 per day.

Claimant's injuries were and are painful and disabling. He is required to wear a sacroiliac belt when not resting. His injuries consisted of a severe, chronic sacroiliac sprain, sacro-lumbar contusions, and sprain, lacerations, and abrasions of his legs. Subsequent to his accident, claimant developed a traumatic arthritic condition in his sacroiliac joint and in his cervical vertebrae. Two of respondent's doctors found fairly clear manifestations of traumatic neurosis, which had caused claimant to give up work.

Hospitalization, X-Rays, medical care and appliances have cost claimant approximately $400.00. His doctor had treated him eighty-five times up to the time of the last hearing in this case.

Under Section 8 C of the Court of Claims Act, an award in this case is limited to $2,500.00. Whether such sum will compensate claimant for the damages he sustained as a result of respondent's negligence is doubtful, but he is certainly entitled to that amount.

An award is, therefore, entered in favor of claimant, **Frank** Herrin, in the sum of $2,500.00.

(No. 4141 — Claimant awarded $1,820.22.)

ANGELO LA MANTIA, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 13, 1950.

FRANK MARTOCCIO AND S. S. SCHILLER, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER AND WILLIAM J. COLOHAN, Assistant Attorneys General, for Respondent.

WORKMEN'S COMPENSATION *Am — when an award will be allowed.* Where claimant, employed as a carpenter by respondent at the Chicago State Hospital, suffered an injury to his back, which later developed into a traumatic lumbo sacral arthritis with a shifting of the lumbar spine to the right at the lumbo sacral articulation, and said accident happened while claimant was working on an icy scaffold, Court held that he was entitled to an award under the Act for a 20 per cent loss of use of both legs.

WORKMEN'S COMPENSATION ACT—*when the jurisdictional requirement of Section 24 of the Act of having made an oral or written demand for compensation within six months of the data of the accident have been met.* Where claimant had been paid his full salary during his period of hospitalization, and during said time he was unable to perform services, Court held that this constitutes a waiver by respondent of the necessity for such demand for payment of compensation within six months. *United Air Lines* vs. *Ind. Com.*, 364, Ill. 346 cited.

LANSDEN, J.

On July 8, 1949, an opinion was filed herein denying an award to claimant because the record failed to disclose that claimant, who was seeking to recover under the Workmen's Compensation Act, had complied with the jurisdictional requirement of Section 24 of such Act of having made an oral or written demand for compensation within six months of the date of his accident.

On petition of claimant we granted a rehearing, because counsel for claimant had been under the impression such jurisdictional fact had been stipulated, which fact counsel were prepared to prove.

Claimant, Angelo LaMantia, was employed in the Department of Public Welfare on December 15, 1947,

as a carpenter at the Chicago State Hospital, Chicago, Illinois. On that day, while in the course of his work and standing on an icy scaffold, claimant and a fellow workman lifted a twenty-two foot rafter weighing approximately 250 to 300 pounds. They had raised the rafter about waist high; suddenly the co-worker dropped his end. The jolt and the entire strain being placed on claimant caused him to bend and fall to one knee. Two hours later about quitting time he first experienced a severe pain in his back. The next day he reported to Dr. Louis Olsman, resident physician at the Chicago State Hospital. Dr. Olsman and Dr. Golon, his associate, found the presence of tenderness in the lumbar sacral region of claimant's back. Claimant has continued to suffer pain in his **back and** legs as **a** result of the accident.

Respondent had immediate notice of the accident, and claimant was hospitalized at the Chicago State Hospital the next day, where he remained for two weeks. During the period of hospitalization claimant testified that he orally demanded payment for his injuries from his superior, Mr. John Wright, Chief Engineer, at the institution. He made no other demand to any other person. Since Mr. Wright died before the hearing on rehearing **,** and the supplemental Departmental Report negates the making of any demand, we are inclined to hold against claimant as to an oral demand.

However, during claimant's period of hospitalization he was paid his full salary when he was unable to perform any services for, respondent. Under the decisions of the Supreme Court of Illinois, this constitutes a waiver by respondent of the necessity for such demand for payment of compensation within six months. *United Air Lines* v. *Ind. Com.,* **364** Ill. **346;** *Olney Seed Co.* v.

Ind. Com., **403** Ill. 587. This Court has so held. *Roebuck* v. *State*, 12 C.C.R. *236.*

Claimant's complaint was filed within one year of the date of his accident. Therefore, he has complied with all the jurisdictional prerequisites of Section 24 of the Workmen's Compensation Act.

Claimant testified he has continued to suffer severe pain down his back and both legs since the accident, and that prior thereto he never experienced such pain, or had any injury to his back or legs. He described the pain as present in the lower third of his back, and extending down; also, that his legs feel very tired, and, when standing, sometimes give way requiring him to lean against a support. He remarked that occasionally his legs weaken so that he cannot apply brakes when driving a vehicle. He told he had been a carpenter for four or five years prior to the accident; that after the accident he continued *to* work as a carpenter at the hospital until October 21, 1948, when he had to give it up because it was too painful and hard for him to accomplish. For a while thereafter he did light carpentry for his father-in-law, a contractor. Early in January, 1949, he obtained his present employment as a truck driver with the Indianapolis Forwarding Company.

Mr. LaMantia described his pain as not continuous, except as always present in the morning upon arising. He characterized it as a very tiresome pain, and, that when awakening in the morning the pain made him feel as if he had just put in a twenty hour work day. He stated it was hard for him to lift objects; that he can bend down, but cannot bring anything up in a lift. **At** such times he experiences pain in the end of his back. He stated he had a tooth removed, as recommended by Dr. Olsman. However, this gave him no relief.

Dr. S. I. Weiner, witness for claimant, and a specialist in orthopedic and traumatic surgery, is a member of the staffs of Mt. Sinai and Michael Reese Hospitals in Chicago. On February 2,1949, he gave claimant a clinical examination relating to his back and extremities, including X-Rays. He testified such examination revealed a decrease in the lumbar lordosis curve of the back, and a moderate light lumbar left dorsal curvature or scoliosis. Dr. Weiner continued that analysis of X-Rays taken of claimant disclosed about a quarter of an inch shift from left to right of the lumbar vertebrae in relation to the spinal process of the first sacral segment. He further observed that the X-Rays revealed an abnormally sharp and acute angulation at the level of the fifth lumbar and the sacrum, and an abnormally narrow space posteriorly between the fifth lumbar vertebrae and the sacrum. Dr. Weiner diagnosed the condition of claimant as that of a traumatic lumbo sacral arthritis with shifting of the lumbar spine to the right at the lumbo sacral articulation. Dr. Weiner was of the opinion the above condition of the claimant was of permanent nature, and could or might have been caused by the above described accident.

Dr. Weiner explained that the roots of the sciatic nerve come out of the area of the lumbo sacral articulation, and that a shift in the lumbar spine in that region is consistent with irritating the roots of the sciatic nerve. He said such irritation produced the effect of radiating pain from the back down the extremities, and, depending upon which roots were involved, pain could result in the knee or foot. Weakness of the extremities and limitation of movement were listed as further effects. He expressed the opinion claimant was unfit for further work as a carpenter.

Upon cross-examination, Dr. Weiner said his opinion was based upon his X-Ray findings, a study of the lumbo sacral region, and the subjective symptoms of claimant. He admitted in a man of claimant's age, these symptoms could be aggravated by arthritis caused by dental caries. He explained the condition of claimant was not the result of poor posture, as there would have also been a change .in the dorsal curve. Dr. Weiner pointed out, however, the facets of the construction of the lumbo sacral articulation of claimant were more shallow than the average, and, as a result, the sudden strain caused by the present accident would more likely result in the injuries above described than ordinarily.

Dr. Louis Olsman, surgeon at the Chicago State Hospital since 1938, treated claimant, first examining him the day following the above injury. He related claimant's treatment included antiphlogistine and physiotherapy. However, claimant continued to have back pain. Mr. LaMantia was referred to the orthopedic clinic of the University of Illinois on April 21, **1948.** While he understood claimant by sleeping on a hard bed, as recommended, had improved, Dr. Olsman said he received no further complaint from claimant, and did not further treat claimant after April 28, 1948, although claimant continued his work as carpenter at the Chicago State Hospital until October 21, 1948.

Dr. Olsman stated he again examined claimant on February **13, 1949,** and found claimant to have an osteocarthritis (predicated upon the presence of dental caries) of the lumbo sacral spine aggravated by trauma. He stated:

"Examination at that time revealed definite tenderness along the spinous processes of the twelfth dorsal and fifth lumbar vertebra; pain in the back **was** exaggerated by hyperextension of the spine, but was not aggravated by flexion of the spine.

The pain in the back was aggravated by twisting of the spine to the right and to the left. When the patient was asked to stand on his tiptoes and come down hard on his heels, the pain recurred in the lower back. My clinical impression at that time was that of osteoarthritis of the lumbo dorsal spine aggravated by trauma."

Dr. Olsman concurred in Dr. Weiner's testimony concerning the interpretation of the X-Rays taken of claimant, and introduced in evidence. It was Dr. Olsman's opinion, based upon a reasonable degree of medical certainty, that the condition of claimant might or could have been caused by the injury complained of.

From the foregoing, we conclude that claimant is entitled to a twenty per cent loss of use of both legs.

This case is largely controlled by *Lubertozzi* v. *State*, 18 C.C.R. 152, where an award was granted for loss of use of a leg as the result of a back injury. Significantly, in that case the same counsel and same doctors were involved as in this case, and the accident therein also occurred at the Chicago State Hospital.

On the date of his accident, claimant was 33 years of age, married, and had five minor children dependent upon him for support. Such children were Santo, age 12, Anthony, age 9, Joann, age 8, Bonnie, age 6, and Violet, age 4. In the year prior to his accident, claimant earned $2,597.00. His rate of compensation is, therefore, $26.00 per week.

All medical and hospital services have been furnished or paid for by respondent.

During claimant's period of hospitalization he was overpaid compensation for temporary total disability. He was paid the sum of $189.20, when he should have been paid only the sum of $33.42, or a net overpayment of $155.78.

A. M. Rothbart and William J. Cleary & Co., Court Reporters, Chicago, Illinois, were employed to take and

transcribe the testimony at the two hearings before Commissioners Young and Tearney, respectively. Their charges are fair, reasonable and customary. Awards are hereby entered in favor of A. M. Rothbart for $73.50,. and William J. Cleary & Co. for $20.25.

An award is entered in favor of claimant, Angelo LaMantia, under Section 8 (e) (15) of the Workmen's Compensation Act for twenty per cent loss of use of both legs, or 76 weeks at $26.00 per week, or the sum of $1,976.00, less the overpayment of $155.78 above referred to, or a net award of $1,820.22, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 4180—Claimant awarded $3,564.59.)

ETNA HEDRICK, ADMX., ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October **13,** *1950.*

LNINGSTON, MURPHY AND BARGER, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where death from an accidental injury occurs within a year from the date in which application must be made for compensation by the injured employee, and then **a** claim is fled within a year from said date of death, respondent is liable.* Where deceased, employed by the Division of Highways, had an accident while in the course of employment, and as a result suffered severe burns, which totally disabled him and he later died, Court held that there was a causal connection between the accident and his death; and also stated that since the death occurred within one year after the last payment of compensation, and since claimant, his widow, filed claim within one year from his death, she is entitled to an award. *(Hilberg* v. *Ind. Corn.,* 380, Ill. 102.) Cited.

SCHUMAN, C. J.

Decedent, Jesse J. Hedrick, was employed by the Division of Highways on December 21, 1941 as a common laborer, and his earnings in the year preceding his injuries totaled $2,009.79.

On' May 13, 1946, decedent was building a fire at a building leased by the Division of Highways at 1315½ South Madison, Normal, McLean County, Illinois. In so doing, he used a 5 gallon can of what was presumed to be kerosene, and after he had made the fire he reached for the 5 gallon 'can to replace it in its proper location. As he reached for the can, it exploded throwing flaming oil over his body. He was taken to the Brokaw Hospital in Normal, and was treated by Dr. George W. Stevenson.

Following the injuries on May 13, 1946, the Division of Highways paid Mr. Hedrick full salary from May 14, 1946 to June 10, 1946, inclusive. Beginning June 11, 1946, Mr. Hedrick was paid compensation at the rate of $18.00 per week to and including August 4, 1947. Payments for total temporary disability total $1,235.41, and were terminated on August 4, 1947, the date which marked the end of the 64 weeks' period provided for in the Workmen's Compensation Act.

All of the medical and hospital expenses were paid by respondent.

Mr. Hedrick died on April 9, 1948, and at the time of his death he lived and resided with Etna Hedrick, his wife, whom the evidence shows was totally dependent upon him for her support, and at the time of the hearing she had not remarried.

The claim is predicated on the theory that the death of Jesse J. Hedrick was the result of the injuries that he received on the 13th day of May, 1946. Claimant contended that the only question to be determined by the

Court is whether the accidental injuries sustained by Mr. Hedrick on May 13, 1946 caused or contributed to his death. The claimant contends that said accidental injuries caused or contributed to Mr. Hedrick's death, and, by reason thereof, his widow is entitled to compensation under the Workmen's Compensation Act.

The respondent contends that the injured employee did not die within one year from the date of his injury, and that no award can be made for his death under the Workmen's Compensation Act. The respondent seems to predicate its entire defense on this theory, and does not contend that the cause of death was not the result of the injuries sustained by Jesse J. Hedrick on May 13, 1946.

From a consideration of the testimony in the record, it can also be considered that the question of causation of death is also before the Court. On the point of cause of death there seems to be a conflict in the testimony, if the medical testimony in the record can be considered as competent testimony—the respondent contending that the death was due to a heart attack in no way related to the injuries sustained May 13, 1946.

The first question for the Court to consider is whether or not the claim is barred under Section 24 of the Compensation Act (Illinois Revised Statutes, 1937, Chapter 48, paragraph 161, as amended in 1939). Said Section, insofar as the same is pertinent in this case, reads as follows:

"Provided, that in any case, unless application for compensation is filed with the Industrial Commission within one year after the date of the accident, where no compensation has been paid, or within one year after the date of the last payment of compensation, where any has been paid, the right to file such application shall be barred; Provided, further, that if the accidental injury results in death within said year, application for compensation for death may be filed with the Industrial Commission within one year after the date of death, but not thereafter."

The decedent sustained accidental injuries on May 13, 1946, and on April 9, 1948 he died. If, as contended by the respondent, death would have to occur within one year from the date of the injuries, there is no question that the claim is barred. In support of its contention respondent cites the case of *Hilberg* v. *Ind. Corn.*, 380, Ill. 102. In that case, Charles Hilberg sustained an injury on April 27, 1937. On January 27, 1938, a lump sum settlement was agreed upon, which said lump sum was paid February 2, 1938. Mr. Hilberg died October 26, 1939, and it was claimed the death resulted from the accidental injuries he received on April 27, 1937. On November 4, 1939, the widow of the deceased filed her application for compensation on account of the death of her husband. The application was dismissed, and was confirmed by the Industrial Commission in the Circuit Court of Cook County. The Court in affirming the decision of the Circuit court held on page 105:

"The amendment of Section 24 was obviously for the purpose of making a specific time beyond which an employer would not be liable for death resulting from an accident, arising out of or in the course of employment. It required the death to occur within one year. It also protected the right of the dependents by providing they should have one year after the death within which to apply for compensation. The law was thus made certain instead of being uncertain, as it was before the amendment, in that under the construction given the former statute the death might occur more than a year after the accidental injury, and thus an employer, complying with all of the provisions of the law, would never have any certainty that the case was fully determined."

In the same opinion the Court said on page 104:

"The limitation of the Act with respect to applying for compensation for accidental death was made more specific by the amendment of 1939. The provision 'if the accidental injury results in death within said year' obviously refers to the year within which application for accidental injury may be made. It then further provides that if the death results within said year application may be made within one year after death. With this interpretation the legislative intent appears twofold,—first, that death from an accidental injury must occur within the year in which application must be made for compen-

sation by the injured employee; and second, if death did occur within such time claim for compensation for such death might be filed within a year there-. after. It is possible under this law that claim for death compensation might be filed within two years after the date of the accident, because the injured man might live almost a year, and the Act gives his dependent a year after his death in which to make such claim. This intention is made more specific by the last words of the amendment, in which it is said the application may be made 'within one year after the date of death, but not thereafter'."

It appears that in the Hilberg Case, supra, there was no question that the claim was filed more than a year after the last payment of compensation. The lump sum was paid February 2, 1938, and the party-died October **26,** 1939, which was more than one year after the last payment of compensation.

The respondent also cites the case of *Corn Belt Motor Company* v. *Ind. Corn.,* 389, Ill. 320 as sustaining its view that the Hilberg case held that the death of the employee must occur within one year from the date the accidental injuries were sustained. **A** reading of this case will show that it was not pertinent to the decision, and was more or less a conclusion drawn from the Hilberg case.

In the instant case, Jesse **J.** Hedrick was injured on May 13, 1946, and was paid compensation up to and including August 4, 1947. Jesse **J.** Hedrick died on April 9, 1948, which would be less than one year after the payment of the last compensation. The claim of his widow, Etna Hedrick, was filed March **23,** 1949, which would be less than one year after the date of death of her husband, .Jesse **J.** Hedrick.

In the Hilberg case, supra, the Court held: "The provision 'if the accidental injury results in death within said year' obviously refers to the year within which application for accidental injury may be made.'' There is no question that if Jesse **J.** Hedrick had lived he could have prosecuted his claim for compensation within one

year after the date of the last payment of compensation to him, which was on August 4, 1947, or in other words he could have filed a claim up to and including August 4, 1948.

Section 24, of the Compensation Act, supra, as the Court held in the Hilberg case, supra, that the legislative intent in enacting said section was twofold,—first, that death from an accidental injury must occur within the year in which application must be made for compensation by the injured employee; and second, if death did occur within such time- claim for compensation for such death might be filed within a year thereafter. The Court draws the conclusion in this case that the true intent of the interpretation of such statute in the Hilberg case was that where .the death occurred within one year after the last payment of compensation that the widow would have one year from the date of such death to file her application for compensation under said Act. The Court therefore concludes that the claim was filed in time, and will proceed to discuss the other points involved in said case.

There is no dispute in the testimony, or in the contentions of the parties, that Jesse J. Hedrick was permanently disabled from the date of his injuries on May 13, 1946 to the date of his death. The only question submitted by the record is whether or not the cause of death could be traced to the accidental injuries sustained on May 13, 1946. As far as the record discloses Jesse J. Hedrick was in good health, an able-bodied man, capable of performing the necessary labor to support his children, now adults, and his wife.

The medical testimony, as far as the record discloses, consisted of medical reports submitted by the following: Dr. George W. Stevenson, which appeared in the .De-

partmental Report, and is his testimony taken on the hearing of this cause on November 14, 1949; Dr. Frank McDowell, a specialist in plastic surgery, and an instructor at Washington University, St. Louis, Missouri, which appears in the Departmental Report; Dr. B. Markowitz which appears in the Departmental Report, and in the testimony taken before the Commissioner on November **14,** 1949; Dr. A. Edward Livingston of Bloomington, Illinois, which appears in the Departmental Report; Dr. W. E. Scott of Lexington, Illinois, which appears in the Departmental Report; Dr. J. Albert Ludin, a specialist in mental and nervous diseases, which appears in the Departmental Report.

The medical reports of Dr. Stevenson were all pertaining to the treatment for the injuries sustained on May 13, 1946 in regards to the burns that Jesse J. Hedrick had received. This is also true of the reports of Dr. Frank McDowell.

Dr. Markowitz in his reports to the Department stated-that he first saw Jesse Hedrick on January 12, 1948, and learned that Mr. Hedrick had developed an acute respiratory infection, that his main complaint was chest pain, and his final diagnosis was that Jesse Hedrick had right sided adhesive pleuritis. In his report on March 9, 1948, in addition to the diagnosis previously mentioned, he stated that in his opinion the patient was highly nervous, and because of the treatment he received over a long period of time he presented a case of psychogenic origin, and suggested that he be sent to St. Louis for further investigation.

Dr. **A.** Edward Livingston, in a report to the Department dated April 9, 1948, stated that he was called in consultation by Dr. Markowitz on February 29, 1948, and that his diagnosis at that time was an inter-lobar

pleurisy, which evidently had nothing to do with any accident or injury.

Dr. W. E. Scott in his report stated that he was called to see the patient primarily for the relief of pain in his right chest wall and weakness.

Dr. J. Albert Ludin in his report to the Department, dated March 31, 1948, made the following diagnosis:

"Traumatic psychosis, involutional depression."

Jesse J. Hedrick saw fit to secure the services of Dr. Emil Z. Levitin in Peoria, Illinois of his own accord.

The facts showed that Jesse J. Hedrick suffered a heart attack while in the hospital in Peoria, Illinois, and that the heart attack had caused his death on April 9, 1948. This was reported by Dr. Levitin to the Department.

On the trial of the case, Etna Hedrick testified that prior to his injuries he was an able-bodied man, and never missed a day working; that he had always supported his wife and children, and that after he was hurt he was a helpless invalid until the date of his death.

Dr. Markowitz testified that he began treating Jesse J. Hedrick on January 16, 1948, that he complained of a pain in the right shoulder, and case history of having had severe body burns about 22 months prior to that time; that he had been hospitalized for **14** months following his injury. That during the examination Mr. Hedrick was tense, nervous and complained bitterly of pain in the right shoulder, and shortness of breath, and that he had residual scars from his burning, and a right pleuritis. That the last time he saw him was on April **6,** 1948, when he sent him to the Methodist Episcopal Hospital in Peoria, Illinois under the services of Dr. Levitin. He further testified that during the entire time he had Mr. Hedrick under treatment that he noted a psychic

element; that decedent was deteriorating very rapidly, and at the time he was referred to Dr. Levitin on April 6, 1948 he was in a condition of premature senility; that by that he meant that all of his arteries, particularly those of the brain, were aging faster than is normally expected for his age. That Dr. Levitin's report corroborated his findings definitely that a psychosis was connected with his injuries.

That Dr. Levitin gave him a report that the cause of death was coronary thrombosis, but that he felt that he had a generalized hardening of the arteries, particularly those of the brain, and involving all the arteries of the body, in which the heart would be included, and that he died of premature senility. That in his opinion the injuries that he received accelerated the deteriorating process and that Hedrick would have lived a longer period of time had he not received the injuries. That in his opinion the burns Mr. Hedrick received were a contributory cause of death, and that he felt that the burns and subsequent suffering caused his general arterial degeneration, which resulted in his death, and concluded that Mr. Hedrick had traumatic psychosis.

It was conceded by all of the doctors that the only definite diagnosis of a coronary thrombosis would be by a post-mortem, which was not performed.

An X-Ray report, made by the Methodist Episcopal Hospital in Peoria and signed by the radiologist of the Hospital, appears in the record with *a* reading as follows:

> ":Neurosis is negative for definite changes. Slight osleoporosis of the sella, **and** sclerosis of the para-sellar vessels."

Dr. George W. Stevenson testified that he first treated Jesse Hedrick on the 13th day of May, 1946 for the burns that he had received, as previously set out.

That he did not treat Hedrick subsequent to July of 1947; that in his opinion the injuries would have no connection with the cause of death of coronary thrombosis. That he did not know of his own knowledge that Mr. Hedrick had died of coronary thrombosis, but only the report that he had received. That it would be conceivable that Hedrick had a general decline over a period of time, that the burns, shock and long period of recovery would hasten a general loss of strength and well being, and that the condition probably caused his death to occur earlier than if he had not suffered said injuries and shock. That even though he had deteriorated, both mentally and physically, as a result of being injured, Mr. Hedrick could have suffered from some other disease, which might have caused his death, and not be connected with the injury.

There is no testimony in the record, outside of comments by Dr. Markowitz, Dr. Stevenson or Dr. Levitin, the last doctor to attend decedent and who described the cause of death as a heart attack. Dr. Markowitz, in his testimony, stated that in his opinion, although he was not attending him at the time, that Mr. Hedrick did not die of a heart attack, but his death was caused by general hardening of the arteries due to premature senility.

The only conclusion that the Court could reach in this case from the examination of the testimony, and the other pertinent facts, is that Jesse J. Hedrick on May 13, 1946 received serious and permanent injuries as a result of burns. That from May 13, 1946 to the date of his death on April 9, 1949 he was permanently disabled and unable to perform any kind of manual labor. That his death was accelerated by his long course of treatment and confinement involved with traumatic psy-

chosis. No other conclusion could be reasonably reached on the record, even though a great deal of testimony might be considered incompetent. However, no objections were made to this testimony, and the Court will not search the record to determine the competency or incompetency of such testimony under such a situation. In fact, such testimony without objections would have to be considered as competent testimony by the Court.

All of the testimony showed that Jesse J. Hedrick, the decedent; was in good health previous to the time he sustained his injuries.

In *Plano Foundry* Co. v. *Industrial Com.*, 356 Ill. 186 at 198 and 199 held:

> "Proof of the state of the health of the employee prior to and down *to* the time of the injury, and the change immediately following the injury and continuing thereafter, is competent as tending to establish that the impaired condition was due to the injury."

The testimony at the hearing was transcribed by Bess H. Armstrong, who has submitted a statement for $58.10 for such services. This charge is reasonable.

All medical and hospital expenses have been paid by the State.

From all of the evidence in the record, the Court concludes that decedent, Jesse J. Hedrick, should have continued to receive compensation because of his total permanent disability. From undisputed testimony, the decedent was sent to various doctors by the State up to March 25, 1948, and without question the decedent was afflicted with traumatic psychosis. To deny an award under such circumstances, in the opinion of this Court, would be a travesty on justice. To say that the State concluded the man was mentally afflicted, and then to deny an award because of decedent's failure to file a claim for an award to which he was justly entitled, would

thwart the ends of justice and the liberal interpretation of the Compensation Act. It is as much the duty of the State, in such circumstances, to see that the decedent's interests were protected, as it was for the claimant himself.

From all the evidence in the record, the Court concludes that the claimant is entitled to an award. An award is, therefore, entered in favor of Etna Hedrick in the amount of $4,800.00. Jesse J. Hedrick, in his life, time, had received payments in the amount of $1,235.41, which sum shall, for the reasons announced, be deducted from the total award herein granted. The balance of $3,564.59 shall be paid at the rate of $18.00 a week commencing on April 10, 1948, of which 131 weeks have accrued to October 14, 1950, or a total of $2,358.00, less payment of $1,235.41 made to Jesse J. Hedrick, or the sum of $1,122.59, which has accrued and is payable forthwith. The balance of $2,442.00 is to be paid at the rate of $18.00 per week for a period of 135 weeks commencing on October 21, 1950, with one final payment of $12.00.

An award in the amount of $58.10 for stenographic services is entered in favor of Bess H. Armstrong.

Future payments of compensation being subject to the Workmen's Compensation Act of Illinois, the jurisdiction of this cause is specifically reserved for the entry of such other orders as from time to time may be necessary.

. This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensalion awards to State employees."

(No. 4215—Claim denied.)

LEE MATHEWSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 13, 1950.

JAMES O. MONROE, JR., Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S OCCUPATIONAL DISEASES ACT—*what is* insufficient to *permit* recovery under. Where claimant, employed as a laundry truck driver by respondent, contracted tuberculosis during the time of his employment, but failed to prove that respondent was guilty of negligence, Court held that he was not entitled to an award.

TO ESTABLISH NEGLIGENCE—Within *the meaning* of *Section 3* of the *Workmen's* Occupational Diseases Act, claimant *must* prove respondent violated: (1) A rule or rules of the Industrial Commission made pursuant to the Health and Safety Act, or (2) Violated a Statute of this State intended for the protection of the health of employees.

DELANEY, J.

This claim is brought under Section 3 of the Workmen's Occupational Diseases Act by Lee Mathewson, claimant, for damages sustained as a result of contracting tuberculosis during the course of his employment by the above named respondent.

The record consists of the complaint, amended complaint, departmental report, transcript of evidence, claimant's X-Ray exhibits, motion of claimant for an extension of thirty days, letter waiving additional medical testimony, abstract of evidence and claimant's brief.

Claimant is married, and has one child. He was first employed by the State of Illinois as an attendant in 1935, and worked in that capacity until 1939. He was then transferred to a truck driver's position. He stopped work about September 7, 1948 to enter the Madison County Tuberculosis Sanitarium, and remained there three months for treatment. He was then hospitalized in Alton for eight days, and sent home.

The duties of a laundry truck driver include picking up laundry and dirty clothing around the institution, and delivering the clean laundry. He handled all the hospital laundry, and brought it to the laundry from the hospital premises.

Claimant cites this Court in the case of *Odle* vs. *State,* 16 C.C.R. 183 as holding that he is entitled to damages under Section **3** of the Workmen's Occupational Diseases Act. In that case, however, respondent violated the rules of the Department of Registration and Education.

On September 3,1946, the Alton State Hospital published their Bulletin No. 160, which contained the following instructions :

"The Institution will secure wheeled carts equipped to hold laundry bags for the wards where there are contagious linens, if they do not now have them. The soiled linens will not be handled under any circumstances by patients, except those patients with arrested tuberculosis may help in the handling of linens in wards housing patients with active tuberculosis under direct supervision of employees. (This means in the presence and sight of employees.)''

"When linens are gathered into the laundry bags, such bags are to be closed, and are not to be opened until they are emptied into a washer in the laundry by an employee. In emptying the bags into the washer, the employee shall not handle the linens, but shall invert the bag, emptying its contents, and, thereafter, drop the bag into the washer."

The departmental report filed herein indicates that the provisions of Bulletin No. 160 were complied with. To establish negligence within the meaning of Section **3** of the Occupational Diseases Act, claimant must show

respondent violated (1) a rule or rules of the Industrial Commission made pursuant to the Health and Safety Act, or (2) violated a statute of this State intended for the protection of the health of employees, *Ramsey* vs. *State*, 18 C.C.R. 174.

It has not been shown that respondent has violated a rule of the Industrial Commission, or a statute of the State. Claimant's claim must be denied.

For the reasons assigned, the claim is denied.

Henry P. Keefe submitted his invoice in the sum of $32.00 for taking and transcribing the testimony in this case, which charge is fair, reasonable and customary. An award is, therefore, entered in favor of Henry P. Keefe in the sum of $32.00.

(No. 4265—Claimant awarded $1,176.58.)

ROSCOE A. HOPKINS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 13, 1950.

STONE AND FOWLER, AND OMER W. JONES, JR., Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, employed as a guard at the Illinois State Penitentiary, Menard, Illinois, fell on ice while sorting hogs and fractured his left wrist, Court held that he was entitled to an award under the Act for 50 per cent permanent partial specific loss of the use of the left hand.

SCHUMAN, C. J.

The claimant, Roscoe A. Hopkins, was on February 4, 1949, employed by the respondent as a guard at the Illinois State Penitentiary, Menard, Illinois. On February 4, 1949, while sorting hogs on the farm of the respondent at Menard, the claimant slipped and fell on

ice covered ground. As a result of this fall, the claimant fractured his left wrist.

The claim was filed within the time provided by law and notice of the injury was immediate. The only question raised by the respondent was whether or not the accidental injury arose out of and in the course of the employment of the claimant.

The evidence discloses that the accidental injury did arise out of the course of employment of the claimant, so there are no jurisdictional questions to be considered by the court.

The evidence further showed claimant's yearly wage, preceding the accident, was $2,580.00.

Respondent furnished all medical and hospital services.

The evidence discloses that it was necessary to operate on the left arm of claimant after it was set by Dr. Carris. The operation was performed by Dr. James A. Weatherly at St. Andrew's Hospital, Murphysboro, Illinois. The X-Rays showed a fracture of the left radius of the distal end in the wrist. Claimant sustained permanent partial disability to the left hand as a result of the injury, and the estimate was fixed at about 50%. This conclusion being drawn from the testimony of Dr. Weatherly, and the examination by the Commissioner.

Dr. Weatherly testified that the condition found, with reference to the disability mentioned, would be permanent.

The claimant, although off some time, was paid full salary, and there was no claim made for temporary total disability.

The testimony at the hearing was taken and transcribed by Imogene Ward Steph, and she has submitted

a statement for $54.93, which the Court finds to be reasonable.

On the basis of the record, we make the following award:

For 50 per cent permanent partial specific loss of the use of the left hand for a period of 85 weeks at $19.50 per week or a total of $1,657.50. Claimant was overpaid for non-productive time the sum of $480.92, which deducted from the award leaves a balance of $1,176.58, all of which is accrued and is payable forthwith.

An award is entered in favor of Imogene Ward Steph for stenographic services in the amount of **$54.93,** which is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4269—Claimant awarded $1,068.75.)

GUY E. RIGDON, Claimant, *vs.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed October 13, 1950.

ROY A. PTACIN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—***when an award will be made under.*** Where claimant, employed as an Institutional Worker at the Chicago State Hospital, injured his right knee when he was attacked by a patient, and suffered a damaged internal semilunar cartilage, Court held that he was entitled to an award under Section 8 (e) (15) (17) (m) of the Act for a 25 per cent loss of use of his right leg.

LANSDEN, J.

Claimant, Guy E. Rigdon, seeks to recover from respondent under the Workmen's compensation Act for injuries sustained by him in an accident arising out of and in the course of his employment as an Institutional

Worker at the Chicago State Hospital operated by the Department of Public Welfare.

On August **12, 1949,** claimant was in charge of an outside detail of mental patients, one of whom became unruly, attacked claimant, and kicked him in his right knee immediately below the knee cap.

Claimant was treated by physicians on the staff at Chicago State Hospital, but it is now agreed by the medical witnesses, who testified in the case, that claimant has suffered some permanent loss of use of his right leg.

Claimant testified at the hearing that there was a stiffness in his right knee accompanied by constant pain just below the knee cap, and that he could not extend his leg completely.

Claimant's doctor found crepitation and pain on manipulation, the pain being located over the head of the tibia. Claimant's right leg was held in a somewhat flexed deformity with a limitation of extension of about 25 degrees. Claimant's doctor diagnosed claimant's injury as a damaged internal semilunar cartilage in his right knee.

Respondent's doctor, who testified, found the same symptoms as found by claimant's doctor, and, in addition, found a small swelling on the outer surface of the right knee.

A fairly complete demonstration of the use of claimant's right leg was made before Commissioner Summers, and in his report he states:

"It is the Commissioner's opinion from hearing the medical testimony in this case and examining claimant's right leg, with special reference to flexion of his right knee, that the claimant has a 25 per cent permanent loss of use of right leg. For this disability he should receive $22.50 per week for 47½ weeks, or a total of $1,068.75 under Section 8 (e) (15) (17) (m) of the Workmen's Compensation Act."

We agree with the recommendation of Commissioner Summers, and an award will be entered in accordance with his recommendation.

On the date of his accident, claimant was 49 years of age, married, but had no children under 18 years of age dependent upon him for support.

In the year prior to his accident claimant had been employed by respondent at both the Illinois State Penitentiary, Menard, Illinois, and the Chicago State Hospital, and his earnings in the year prior to his accident amounted to approximately $2,300.00. His rate of compensation is, therefore, $22.50 per week.

Claimant lost no time from his work, for which he is entitled to be compensated for temporary total disability. All medical treatment has been furnished by respondent.

William J. Cleary & Co., Court Reporters, Chicago, Illinois, was employed to take and transcribe the testimony before Commissioner Summers. Charges in the amount of $37.60 were incurred, which charges are fair, customary and reasonable. An award is, therefore, entered in favor of William J. Cleary & Co. for $37.60.

An award is entered in favor of claimant, Guy E. Rigdon, under Section 8 (e) (15) (17) (m) of the Workmen's Compensation Act for a 25 per cent loss of use of his right leg for which he is entitled to 47½ weeks compensation at the rate of $22.50 per week, or the sum of $1,068.75, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 4271—Claimant awarded $714.17.)

HAROLD CRUGER, DOING BUSINESS AS THE PRESS PUBLICATIONS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 13, 1950.

JOSEPH S. PERRY, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

NEGLIGENCE—failure to *post* warning signs and illuminate barricades makes State *liable*. Where claimant ran into barricades and damaged his car, and the evidence showed that respondent during said night did not illuminate the barricades, nor put up warning signs to inform approaching traffic of the danger, Court held that claimant, in the absence of contributory negligence, could, and was entitled to an award.

LANSDEN, J.

Harold Cruger, doing business as The Press Publications, filed complaint herein to recover for the damages to his automobile sustained in an accident on November 10, 1949. The car was a 1949 Cadillac, purchased in June of 1949, and, just prior to the accident in question, was in good mechanical condition and repair.

The accident occurred on Dempster Street just east of its intersection with Milwaukee Avenue in the City of Chicago, Cook County, Illinois. Dempster Street is designated as U.S. Route 14, and Milwaukee Avenue is marked State Route No. 21. By reason of being a part of the system of State highways, Dempster Street is under the control of the Department of Public Works and Buildings for the purposes of operation, maintenance, etc. Dempster Street, at the point in question, is a four-lane highway running in an easterly and westerly direction, and several days prior to November 10, 1949, an excavation was made in the north half of the pavement for the purpose of repairing same.

On the night of November 10, 1949, Milton John

Cruger, son of claimant, accompanied by a young lady, drove to a dance hall in Skokie, and at approximately 11:15 P.M. was returning home. Shortly after 11:15 P.M. he was driving west on Dempster Street at approximately 38 to 40 m.p.h., and when just east of the intersection of Route 21 he suddenly saw barricades ahead of him. He applied his brakes, but struck the barricades and large chunks of concrete on the pavement, lost control of the car, and landed in the ditch on the north side of the highway with the car headed south. Neither he nor his companion received any personal injuries. The car was considerably damaged along the front, right side and underneath.

The driver of the car testified that there were no warning signs east of the barricades, and that there were no flares or smudge pots burning at the barricade. The driver did not know of the repairs being made on Dempster Street.

John Henning also testified at the request of claimant, and stated that he was a Highway Deputy Sheriff for Cook County. He testified that lie received a call at headquarters about 1:00 A.M. advising that there had been an accident just east of Dempster Street and Milwaukee Avenue; that he went immediately to the scene of the accident, and that he found no warning signals or flares east of the barricades to warn approaching motorists. He further testified that there were barricades on the highway protecting a small hole in the highway, and around the hole were several large blocks of concrete. He testified that there were smudge pots at the barricade, but that none were lighted, and, although they were filled with fuel, they would not stay lit when he attempted to light them himself. He states that he then called the Highway Department advising them of the condition. Hen-

ning further testified that a complaint was received at their headquarters at approximately 10:50 P.M. on November 10, 1949, that the lights at this barricade were out, and headquarters notified respondent's highway section man.

The testimony of Milton John Cruger and John Henning is undisputed, and no objections were made by respondent to any of their testimony.

The departmental report on file herein is not responsive to the testimony of claimant's witnesses. The report states that at sun down seven smudge pots were burning at the barricades, and one smudge pot was illuminating the barricade sign about 500 feet east of the barricades. The report further states that at 1:45 **A.M.,** more than two hours after the accident in question, three smudge pots were burning at the northeast, southwest and south, east corners of the barricade area and the "barricade" sign was illuminated. However, the report is silent on the crucial fact of whether the smudge pots were lighted at the time of the accident.

We therefore conclude that claimant has made out a case of negligence on the part of respondent. *Toler* v. *State,* 16 C.C.R. 315; *Dockry* v. *State,* 18 C.C.R. 177; *Caudle* v. *State,* No. 4148, opinion filed October 20, 1949; *Rickelman* v. *State,* No. 4195, opinion filed October **20,** 1949.

Claimant's automobile was repaired at Les Bierk Chevrolet Inc., Elmhurst, Illinois. The amount of the reasonable repairs for the damages sustained was $714.17. Claimant had no collision insurance.

An award is, therefore, entered in favor of claimant, Harold Cruger, doing business as The 'Press Publications, in the amount of $714.17.

(No. 4293—Claim denied.)

THOMAS MCGINTY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 13, 1950.

COUTRAKON AND COUTRAKON, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award will 'be denied under.* Where claimant, employed as a Maintenance Worker at the Jacksonville State Hospital, injured himself when he saved a helper from being hurt by falling bottles, and later claimed as a result he suffered a hernia, Court held that he was not entitled to an award because of failure to make the necessary proof as required by Section 8 (d) (1) of the Act. Proof showed that claimant had a hernia at the time of his original employment.

WORKMEN'S COMPENSATION ACT—*elements of proof necessary* to ***justify*** *award for hernia under the* **Act.** (1) the hernia was of recent origin; (2) its appearance was accompanied by pain; (3) it was immediately preceded by trauma arising out of and in the course of employment; **(4)** the hernia did not exist prior to the accident.

DELANEY, J.

Claimant, Thomas McGinty, seeks an award for certain medical expenses, and compensation for complete and permanent disability under the Workmen's Compensation Act.

The record consists of the complaint, filed April 20, 1950, departmental report, supplemental departmental report of June 21, 1950, and supplemental departmental report of June 29, 1950, transcript of evidence, and stipulation waiving briefs of both parties.

Claimant, Thomas McGinty, entered the service of respondent at the Jacksonville State Hospital October 4, 1944, as an Institution Worker. He was reclassified November 26, 1947, and his position title changed to that of Maintenance Worker (Power Plant).

On April 22, 1949, the claimant was moving large bottles of oil. One of the bottles slipped, and in jerking the bottle to keep from injuring a helper, he felt a pain

in his side. Dr. F. A. Norris treated claimant for reduction of a hernia. Dr. James Le Ranes, the examining physician of respondent, reported claimant had a single hernia at the time of his original employment on October 1, 1944. The earnings of claimant during the year immediately preceding the date of alleged injury were $2,292.00. The Jacksonville State Hospital advises that claimant was paid for disability time the sum of $191.00. Claimant returned to work about July 5, 1949, and worked until January 1, 1950, at which time he was discharged by the respondent.

Under Section 8 (d-1) of the Workmen's Compensation Act, an injured employee, to be entitled to compensation for hernia, must prove:

1. The hernia was of recent origin;
2. Its appearance was accompanied by pain;
3. It was immediately preceded by trauma arising out of and in the course of employment;
4. The hernia did not exist prior to the accident.

Claimant having failed to establish by the evidence that he is entitled to an award, his complaint must be dismissed.

Award denied.

Hugo Antonacci, Court Reporter, has filed a bill for reporting services in this case in the sum of $37.60. The bill appears reasonable for the services rendered, and is hereby allowed.

Award is hereby rendered in favor of Hugo Antonacci in the sum of $37.60.

(No. 4296—Claimant awarded $273.90.)

QUENTIN GEORGE DAIBER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 13, 1950.

ELDON M. DURR, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, an employee of the respondent in the Department of Public Works and Buildings, Division of Highways, was injured while cleaning the sickle of a power mower when his hand slipped and his left ring finger was caught in the sickle, the major portion of the distal phalanx of which was severed, Court held that claimant was entitled to **an** award under the Act for one-half the loss of his left ring finger.

DELANEY, J.

On June **13,** 1949, the claimant, Quentin George Daiber, was an employee of the respondent in the Department of Public Works and Buildings, Division **of** Highways, While cleaning the sickle of a power mower, his hand slipped causing the left ring finger to be caught in the sickle, and the major portion of the distal phalanx was cut off. His foreman, Joseph E. Britt of Alhambra, was notified at once of the accident, and took Mr. Daiber to St. Joseph's Hospital, Highland, where Dr. Ewald Hermann rendered first attention and amputated the finger at the distal joint.

Claimant was first employed by the Division on March 1, 1949, as a highway section man's helper at a salary of $180.00 a month. Division employees in this classification ordinarily work continuously throughout the year. Claimant was 28 years of age, married, and had three children under 16 years of age dependent upon him for support. His compensation rate, therefore, would be $18.00 per week. However, as the injury was incurred

after July 1, 1947, this must be increased 30 per cent, making his compensation rate $23.40 per week.

At the time of the accident, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident, and claim for compensation were made within the time provided by the Act. All medical services were paid by the respondent.

Claimant is entitled to an award for one-half the loss of his left ring finger. Under Section 8, Paragraphs (e), (4), and (j) as increased by Paragraph (m), this would be 12½ weeks at $23.40 per week, or $292.50. The claimant was temporarily totally disabled from June 14, 1949 to June 20, 1949. Respondent paid him full salary for a period amounting to $42.00. The sum of $18.60 must be deducted from the award for non-productive time.

An award is, therefore, made in favor of the claimant, Quentin George Daiber, in the sum of $292.50, less the sum of $18.60 paid for non-productive time, or the sum of $273.90, all of which has accrued and is payable forthwith.

Henry P. Keefe, Court Reporter, was employed to take and transcribe the testimony, for which he made a charge of $11.60. We find that this charge is fair, reasonable and customary.

An award is. therefore, entered in favor of Henry P. Keefe in the sum of $11.60.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4315—Claimant awarded $117.00.)

DOROTHY A. FARRELL, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

***Opinion fled October** 13, 1950.*

DOROTHY **A.** FARRELL, Claimant, pro se.

IVAN **A.** ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, while employed by and in the performance of her duties for the Illinois Public Aid Commission, slipped and fell on an ice covered sidewalk fracturing her right arm, and with approval of respondent she secured her own medical and hospital services, Court held that under Section 8 (a) of the Act, claimant is entitled to an award for said monies she expended for necessary medical and hospital services.

LANSDEN, **J.**

On March *3,* 1950, claimant, Dorothy A. Farrell, while employed by and in the performance of her duties for the Illinois Public Aid Commission, slipped on an ice covered sidewalk in Monmouth, Illinois, and fell fracturing her right arm.

Respondent did not furnish claimant with the necessary medical and hospital, services, but permitted her to secure such services with its full approval.

It is apparent from the departmental report on file herein that such medical and hospital services were reasonably required to relieve or cure claimant from the effects of her accidental injury. Sec. 8 (a) Workmen's Compensation Act. In fact, the results achieved from the skillful treatment by claimant's doctors have obviated any claim for disability.

All claimant seeks is an award under Section 8 (a) of the Workmen's Compensation Act in the sum of $117.00 for medical expenses, which she incurred as a result of her fall, and to an award in such amount claimant is entitled.

An award is, therefore, entered in favor of claimant, Dorothy A. Farrell, for $117.00, payable forthwith as follows:

$15.00 *to* claimant for the use of Dr. John O. Firth, Monmouth, Illinois, **for** professional services.

$27.00 to claimant **for** the use **of** Monmouth Hospital, Monmouth, Illinois, for X-Rays and hospital care.

$75.00 *to* claimant for the use of Dr. Russell M. Jensen, Monmouth, Illinois, for professional services.

According to the departmental report on file herein, the Illinois Public Aid Commission has funds available for the payment of compensation awards. Therefore, it is directed that the payment of the above award be made **by** the State Treasurer, as Trustee Ex-Officio, from the funds heretofore deposited by the Illinois Public Aid Commission, or its predecessor, the lllinois Emergency Relief Commission, with the State Treasurer pursuant to Ill. Rev, Stat. 1949, Chap. 127, Sec. 181a. Payment of the award from this fund is requested by the' Illinois Public Aid Commission in the departmental report, and such request constitutes the necessary statutory direction. *Hoppock* v. *State,* 16 C.C.R. 206.

This award is subject to the approval of the Governor as provided in Section **3** of "An Act concerning the payment **of** compensation awards to State employees."

(No. 4326—Claim denied.)

ROY HARPER, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed **October 13,** *19.50.*

LATHROP J. **HUNT,** Attorney for.Claimant.

IVAN A. ELLIOTT, Attorney General; C. **ARTHUR** NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be denied under.* Where claimant was injured as a result of an accident arising out of and in the course of his employment by respondent at the Training School for Boys, St. Charles, Illinois, operated by the Department of Public Welfare, Court held that claimant filed his case too late, and thus the claim was barred by Section 24 of the Workmen's Compensation Act, and also barred by Section 22 of the Court of Claims Act.

LANSDEN, J.

On August 12, 1950, claimant, Roy Harper, filed his complaint, alleging that on March 18, 1948 he was injured as a result of an accident arising out of and in the course of his employment by respondent at the Training School for Boys, St. Charles, Illinois, operated by the Department of Public Welfare.

Seeking to recover under the Workmen's Compensation Act., claimant further alleged that he was paid no compensation, but that medical, surgical and hospital services were furnished by respondent.

Respondent has filed a motion to dismiss, asserting that this Court is without jurisdiction of. claimant's case.

It is manifest that claimant's complaint is filed too late, and that this Court has no jurisdiction of his case. Not only is claimant barred by Section 24 of the Workmen's Compensation Act, but he is also barred by Section 22 of the present Court of Claims Act.

Upon the authority of *Hexdall* v. *State*, No. 4245, opinion filed April 18, 1950, wherein the same question was decided, thoroughly discussed, and previous decisions of this Court collected, the motion of respondent to dismiss must be and is hereby sustained.

Case dismissed.

(No. 4328—Claimant awarded $960.00.)

C. RAY ORWIG, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed October 13, 1950.

HUBER, REIDY AND KATZ, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, employed as an equipment operator by the Division of Highways, in the course of his employment received a crushing injury to his right index finger, resulting in the amputation of the proximal third of the middle phalanx of said finger, Court held that claimant was entitled to an award under the Act for the loss of the right index finger.

SCHUMAN, C. J.

Claimant, C. Ray Orwig, aged 31, was married, and had two children under 18 years of age dependent on him for support on September 15, 1949. On said date claimant was employed by the Division of Highways of the State of Illinois as an equipment operator, and earned $225.00 per month. He mas first employed on July 25, 1949, and up to the date of his injury on September 15, 1949 had earned $388.31.

On September 15, 1949 claimant received a crushing injury to his right index finger, resulting in the amputation of the proximal third of the middle phalanx of said finger.

It was stipulated that the departmental report would constitute the record in this case.

No jurisdictional questions are raised, and it is admitted that claimant's earnings, by using the proper guide, mould allow maximum compensation, as men engaged in comparable employment mould receive $2,700.00 for tlie year preceding the injury. All medical expenses have been paid by the State. The only question remaining is the amount of' specific loss.

The Court concludes that claimant, having sustained the loss of the third phalanx and a substantial part of the second phalanx of the right index finger, is entitled to an award for the loss of the right index finger.

An award is, therefore, entered for the loss of the right index finger of the claimant for 40 weeks at $24.00 a week, or a total award of $960.00. All of said award has accrued and is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(Nos. 4173-4174-4175—Consolidated—Claimants awarded $770.00, $648.00, and $1,930.00, respectively.)

OSCAR LAMORE, No. 4173, BARBARA ELLEN SMITH, HELEN CATHERINE SMITH, MINOR HEIRS AT LAW OF EDMOND P. SMITH, DECEASED, BY MARGARET E. KEIGHER, THEIR NEXT FRIEND AND GUARDIAN, No. 4174, OTTO BRANDT AND ELLA BRANDT, HUSBAND AND WIFE, AS JOINT TENANTS, AND JOHN HILGENDORF, No. 4175, Claimants, *vs.* STATE OF ILLIOIS, Respondent.

Opinion filed September 19, 1950.

Petition of claimant for *rehearing in Case No.* **4173,** *Oscar Lamore, denied November 14,* 1950.

JOHN H. BECKERS AND HARBY S. STREETER, Attorneys for Claimants.

IVAN A. ELLIOTT, Attorney General; WILLIAM J. COLOHAN, AND C. ARTHUR NEBEL, Assistant Attorneys General, for Respondent.

NEGLIGENCE—*State is liable for negligence in the failure to properly handle a sewage disposal plant, and as a result a creek is polluted and adjoining property owners are damaged.* Where respondent operated a sewage disposal plant at the Manteno State Hospital, and through failure to properly handle it a creek that ran through respondent's land and also the land of the claimants was contaminated and polluted, Court held that each claimant was entitled to an award for damages they suffered because of the negligence of the respondent.

SCHUMAN, C. J.

The above entitled cases are all claims for damages caused by the pollution of a stream known as "Rock Creek" by the Manteno State Hospital. All grew out of the same state of facts, and, therefore, upon stipulation of the parties have been consolidated for the purpose of the hearing and consideration thereof.

It was stipulated that Oscar Lamore, claimant, is the owner, and is in possession of the real estate described in paragraph 1 of the complaint in Case No. 4173.

It was stipulated that Barbara Ellen Smith and Helen Catherine Smith are the owners of the land described in paragraph 1 of the complaint in Case No. 4174, and Francis W. Smith is the tenant.

It was also stipulated that Otto Brandt and Ella Brandt, husband and wife, as joint tenants, are the owners of the real estate described in paragraph 1 of the complaint in Case No. 4175, and that John Hilgendorf is the tenant on said premises.

It was further stipulated that the State of Illinois operates and maintains a hospital for the care of mental patients at Manteno, Illinois, known as the Manteno State Hospital, located in Sections 23 and. 26, Township 32 North, Range 12 East of the Third Principal Meridian in Kankakee County, Illinois; and that the west boundary of the property of the State of Illinois is a highway, which is also the eastern boundary of the property of the claimant, Oscar Lamore.

It was further stipulated that the population of said institution during the month of December for the following named years mas as follows:

1946, 6,542 inmates and 976 employees for a total of 7,518; for the year 1947, 6,973 inmates and 975 employees for a total of 7,948; and in the year 1948, 7,319

inmates and 1,099 employees for a total of 8,418.

It was further stipulated that "Rock Creek" runs in a southwesterly direction along the northwest corner of the lands of the State of Illinois in Section **23,** and proceeds southwest through the lands of claimant, Lamore, and thence through the lands of the Smith heirs and Brandt; and that "Rock Creek" is a natural water course which empties into the Kankakee River 8 or 9 miles farther southwest.

The State maintained a sewage treatment and disposal plant on Section **23,** and all the effluent from the hospital, except from certain farm buildings, is gathered into and treated in the plant, and is emptied into the creek near the northwest corner of Section **23,** a distance of approximately two hundred (200) feet east of the Lamore land. There is no question from the testimony that from the discharge of the sewage into said creek it became contaminated and polluted, and that the claimants suffered damages by reason thereof.

The testimony, without contradiction, was that if the sewage plant had been properly handled that this condition would not have existed.

A similar factual situation was determined by this Court in the case of *McComb* v. *State* of *Illinois,* **11,** C.C.R. 580, and the Court feels that the decision in that case was correct, and that any question with reference to the legal rights of the claimants to recover has been determined by this Court, whether on the theory of negligence, or on the theory of taking property without just compensation. For this reason we do not feel it necessary to discuss the legal questions raised by the respondent, and conclude that the State is liable and as stated by the Court in said decision and we quote on page 591:

"The cases cited would seem to be conclusive of the right of the several claimants to recover, under the provisions of the Constitution, such damages as they have sustained, limited, however, to the allegations of their several complaints, the testimony in the record, and the law governing the proper measure of damages in cases of this kind."

It is, therefore, only necessary for this Court to consider the proper measure of damages.

Claim No. 4173, Oscar Lamore. This claimant was the owner of the property in question, and claimed that he had 35 acres of ground affected by the overflowing of the creek. The Court feels that the only reasonable conclusion that can be drawn from the evidence on this particular claim is that during the years 1947 and 1948 claimant had to take his live stock out of pasture for 3 months during the years mentioned. That, as a result of such pollution, his cattle had to be dry fed, and that he lost some milk production. That the claimant mould be entitled to 90 days for dry feed at the rate of 25 cents per day for each head of cattle or a total of $270 for each of the years 1947 and 1948 or a total of $540.00. For a loss of milk 36 cans at 64 pounds to the can for each of the years 1947 and 1948 or a total of 72 cans equivalent to 4,608 pounds at $5.00 per 100 pounds or the sum of $230.00, making a total damage award to said claimant, Oscar Lamore, of $770.00.

Barbara Ellen Smith, Helen Catherine Smith, minor heirs at law of Edmond P. Smith, by Margaret F. Keigher, their next friend and guardian, and Francis W. Smith, Claim No. 4174. The only conclusion that the Court can reach on this claim, taking into consideration the facts on the other claims, which the Court is bound to consider, is that the said owners of said ground are entitled to damages for loss of use of said ground for pasture land. The Court concludes that the damages for such loss of use is in the amount of $648.00 for the two years 1947 and 1948.

Otto Brandt and Ella Brandt, and John Hilgendorf, Claim No. 4175. The only testimony with reference to any damages sustained by the owners, Otto' Brandt and Ella Brandt, was that they lost $12.00 per year per acre on 29 acres of pasture. The Court feels that from the other factual situations and evidence that this is a fair measure of damages for the owners, Otto Brandt and Ella Brandt, and a claim is allowed in the amount of $696.00 to the said Otto Brandt and Ella Brandt. As to the tenant, Hilgendorf, the Court feels that the evidence definitely shows that he suffered damages in purchasing extra feed for his 30 head of cattle for the two year period in the amount of $1,350.00. He sustained loss in milk production of 1 can a day for 90 days in each of the 2 years, making a total damage of $580.00, figured at $5.00 per 100 pounds. However, he was allowed $12.00 an acre per year on the 29 acres of pasture by his landlords, Otto Brandt and Ella Brandt, making a total of $696.00 for the two year period which would have to be deducted from his total award, leaving a net claim to be paid of $1,234.00 to the claimant, John Hilgendorf, by the Court.

An award is, therefore, entered in favor of the several claimants as follows:

Claim No. 4173, Oscar Lamore, $770.00.

Claim No. 4174, Margaret F. Keigher, guardian of Barbara Ellen Smith and Helen Catherine Smith, minor heirs of Edmond P. Smith, deceased, $648.00. As to this claim a certified copy of Letters of Guardianship should be furnished before the claim is paid.

Claim No. 4175, Otto Brandt and Ella Brandt, $696.00. John Hilgendorf, tenant, $1,234.00.

(No. 4213—Claimant awarded $433.33.)

WILLIAM F. NOMMENSEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 14, 1950.

ROY A. PTACIN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; **WILLIAM H. SUMPTER,** Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made* under. Where claimant, employed as an attendant at the Chicago State Hospital by the Department of Public Welfare, was struck over the head with a milk bottle, and sustained multiple lacerations to the scalp and head, and, as a permanent result, two **separate scars on his face, Court held that** he **was entitled** to **an award under the Act for permanent and serious disfigurement to the head and face.**

SCHUMAN, C. J.

Claimant, William F. Nommensen, was employed by the Department **of** Public Welfare of the State of Illinois at the Chicago State Hospital, which takes care **of** mentally ill patients.

Claimant was first employed on March 15, **1943,** and on March 6, **1949,** while in the course of his employment, was attacked by a patient, struck over the head with a milk bottle, and sustained multiple lacerations to the scalp and head.

He was treated by Dr. Olsman of the Hospital, and later was seen by Dr. Albert **C.** Field.

Dr. Albert **C.** Field testified that he examined the claimant on May **14, 1949,** and found that he had on the left frontal region of his head a scar 2¾" long, which was discolored and tender on palpation; above the left eye, and partially obscured by some of the scattered hairs of the eyebrow, there was a scar about a half inch above the eyebrow, and another scar about three quarters of an inch; and that in his opinion the scars were permanent, and that the scar 2¾" was apparent about

10 feet away, but that the scar above the eyebrow was not apparent at such distance.

Claimant's earnings for the year immediately preceding his injuries were $2,100.00. He mas married, but had no children, and his compensation rate mould be computed at the rate of $19.50 per meek.

There are no jurisdictional questions involved, and it is stipulated that both of the parties operated under the terms and provisions of the Workmen's Compensation Act.

Claimant seeks an award of $1,500.00 for serious and permanent disfigurement to his head and face.

It has been held by this Court in numerous decisions, particularly in the case of *Jesse, Et Al* vs. *State* of *Illinois,* 16 C.C.R. page 13, as follows:

"A compensable disfigurement must not only be permanent and serious, but must be such a disfigurement as affects a person's employment. Where a person is able to procure employment similar to that in which he was engaged at the time of injury, which caused a disfigurement, with no reduction of earnings, an award is not justified." *(Tyler* vs. *State of Illinois,* 12 C.C.R. 101.)

There was no testimony in this case by either the claimant, nor any physician, that the disfigurements the claimant sustained would in any way effect a reduction of his earnings, or would make him less apt to be able to procure employment similar to that in which he mas engaged at the time of the injury. On the contrary the evidence shows that the claimant has continued in his employment with no reduction 'in his earning capacity.

However, the evidence does show that the claimant sustained some permanent disfigurement to his face, and, therefore, the Court feels that an award of one-third of the total amount that could be awarded for disfigurement would be justified.

William J. Cleary & Co. have submitted a statement

for reporting services in the amount of $38.20, which the Court finds to be reasonable, and therefore entitled to said payment.

On the basis of this record, we make the following award:

For permanent and serious disfigurement to the head and face an amount of **$433.33,** all of which has accrued and is payable forthwith.

An award is also entered in favor of William J. Cleary & Co. for stenographic services in the amount of $38.20.

This award is snbject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4256—Claim denied.)

ROLAND KENNEDY AND DOROTHY E. KENNEDY, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 14, 1950.

HOLLERICH AND HURLEY, Attorneys for Claimants.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

NEGLIGENCE—*when an award will be denied under.*. Where claimants were involved in an accident along a curve on a State highway, and the evidence showed that they did not have their truck under control, were going too fast, their truck load was top heavy, and that they failed to heed warning signs along the road, even though the shoulder of the road was not in good repair at the scene of the accident, Court held that the contributory negligence of the claimants precluded them from an award.

LANSDEN, J.

Commissioner Wise, who heard the testimony in this case has filed a report herein, which reads as follows:

"Roland Kennedy and Dorothy E. Kennedy, husband and wife, filed their complaint herein on January

3, 1950, to recover damages sustained by them in **an** accident on August 15, 1949. They seek to recover for damages to their truck; loss of use of truck from August 15, 1949, to October 30, 1949; loss of cargo of peaches, less salvage; and for personal injuries to the wife, including medical services.

"On August 15,1949, the claimant, Roland Kennedy, an experienced driver, mas the owner of a 1948 Model 1½ ton Ford truck. His brakes and lights mere in perfect condition, The previous day, he purchased a truck load of 100 to 105 bushels of peaches in Jefferson County, Illinois, and left Mt. Vernon, Illinois, at approximately 4:00 P.M. on said day, and later left Salem, Illinois, about 6:00 P.M. Claimants were traveling north on their way to Rochelle, Illinois to sell the peaches, ard to work in a canning plant. At approximately 3:30 A.M. on the morning of August 15, 1949, they reached a point just north of the City of Oglesby, Illinois, when the accident in question occurred. The highway, on which they mere traveling, is known as Illinois State Road No. 2, or U. S. Route 51. Generally speaking, U. S. 51 is **a** north-south route, and at the point of collision connects the cities of Oglesby and LaSalle in LaSalle County. The highway north from Oglesby traverses **a** series of curves down grade before reaching the Illinois River. The hill down, and the curve'around which claimant was traveling at the time of the collision is approximately one-half mile north of the City of Oglesby. There were several signs in place at the time of the collision, bo-wit, a 24 x 24 inch reflectorized sign with a 'curve' symbol on it, and a critical speed sign marked '40 M.P.H.' These signs were on **a** single post, 735 feet south of the top of the hill, and 922 feet south of the beginning of the curve. Another sign mas in place just north of the

beginning of the curve warning of the junctions of Routes U. S. 51 and State 71 near the bottom of the hill. The concrete pavement approaching the curve is 18 feet wide, but the curve is 21 feet wide, and is bordered on the inside by a 21 inch gutter, and on the outside by an earth shoulder. Guard rails border the outside of the curve.

"Roland Kennedy testified that he was driving north at the point in question at a speed of 30 to 35 m.p.h.; that he met a car coming from the opposite direction, and the driver of this car was near the center line of the highway, and driving at a high rate of speed. When the cars were 8 or 10 feet apart, claimant's right front wheel dropped off the pavement, and in attempting to get back on the highway he struck the edge of the pavement and also a hole in the shoulder. In striking the shoulder he lost control of the truck, and crashed into the guard rail with the resulting damages.

"There was considerable testimony as to the condition of the shoulder and the highway at the point in question, and several photographs were admitted into evidence. Kennedy denied that there were any warning signs in place south of the scene of the accident. Kennedy further testified that he had approximately 6,000 pounds on his truck; that the load was top heavy, and he was afraid to apply his brakes just prior to the accident because of the condition of his load. The evidence further reveals that the truck traveled approximately 75 feet after leaving the highway to the first point of impact with the railing at the beginning of the curve, and that approximately 100 feet of guard rail was broken down.

"It is my opinion that the shoulder of the road at the point in question was not in good repair; that there was a drop off from the pavement to the shoulder, and

that the shoulder was rough. However, it is my opinion that the accident in question was caused by the negligence of Kennedy in failing to observe and heed the warning signs at the top of the hill, and not having his truck under control. It is also my opinion that he was driving too fast on the highway at that point, that his load was top heavy, and that his negligence was solely responsible for the accident.

"It is my recommendation that his claim be denied in full. It is also recommended that the claim of Dorothy E. Kennedy be denied, because there is no evidence showing that the State of Illinois was responsible **for** her loss, and that the negligence of her husband was the proximate cause of her injury."

We do hereby adopt the report of Commissioner Wise as an opinion herein, and approve his recommendations.

Awards to claimants denied.

(No. 4298—Claimant awarded $1,785.58.)

SARAH BELL KERSTEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion fled November 14, 1950.

ROY A. PTACIN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, a housekeeper at the Chicago State Hospital, suffered a Colles fracture of her right wrist when she fell down four stairs in the Hospital, Court held that claimant was entitled to an award under Section 8 (e) (12) of the Act for a 50 per cent loss of use of her right hand.

LANSDEN, J.

Claimant, **Sarah** Bell Kersten, seeks to recover from respondent under the Workmen's Compensation Act for

injuries sustained to her right hand as a result of an accident that arose out of and in the course of her employment as a housekeeper at the Chicago State Hospital, operated by the Department of Public Welfare.

On February 4, 1950, claimant, in charge of a cleaning detail, was brushed by one of the patients, who was carrying a ladder, lost her balance, and fell down three or four stairs, sustaining a Colles fracture of her right. wrist.

No jurisdictional questions are involved, and respondent furnished all medical and hospital, treatment required to cure or relieve claimant of the effects of her injuries.

The proof shows that claimant has a permanent but partial loss of the use of her right hand, and the only question involved herein is the extent of such partial loss.

Claimant's right wrist is somewhat atrophied. The silver-fork characteristic of a Colles fracture still remains, there having been an imperfect reduction of such fracture. All movements in the wrist joint are restricted. Extension is limited about one-third and flexion one-half. Eversion is one-half normal, and inversion one-quarter. Claimant cannot make a fist or oppose her thumb to the base of her little finger. Her grip is markedly lessened. Comminution of the fracture of the radius extends into the joint space. A fracture of the ulna has resulted in a deformity of the styloid process. The carpal bones evidence traumatic arthritis.

From the foregoing me conclude that claimant has sustained a 50 per cent loss of use of her. right hand. *Smith* v. *State*, 16 C.C.R. 52.

Claimant on the date of her accident was 65 years of age, unmarried, with no children. In the year prior to

her accident her earnings amounted to $2,244.00. Her rate of compensation is, therefore, $22.50 per week.

Claimant was totally and temporarily disabled 'from February 4, 1950, up to and including March 12, 1950. She was entitled to compensation for such period of 5 1/7 weeks in the amount of $115.71, but she was paid $242.63, or an overpayment of $126.92.

William J. Cleary & Co., Court Reporters, Chicago, Illinois, was employed to take and transcribe the testimony at the hearing before Commissioner Tearney. Charges in the amount of $43.98 were incurred, which are customary. An award is, therefore, entered in favor of William J. Cleary & Co. for $43.98.

An award is entered in favor of claimant, Sarah Bell Kersten, under Section 8 (e) (12) of the Workmen's Compensation Act, for a 50 per cent loss of use of her right hand, or 85 weeks at $22.50, or the sum of $1,912.50, from which must be deducted the overpayment of $126.92, leaving a net award of $1,785.58, payable as follows:

$ 906.43, less overpayment of $126.92, or the sum of $779.51, which has accrued and is payable forthwith;

$1,006.07, which is payable in weekly installments of $22.50 per week, commencing on November 21, 1950, for a period of 44 weeks, plus one final payment of $16.07.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 4302—Claimant awarded $95.27.)

THE TEXAS COMPANY, A DELAWARE CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 14, 1950.

PAUL F. SCHLICHER, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

MATERIALS AND SUPPLIES—*when* claim will be allowed *for* payment *after* appropriation has lapsed. Where claimant, a manufacturer and seller of gasoline, oil and grease, produced sales tickets for products, which it had furnished departments of the State of Illinois, but presented them for payment after the appropriation from which these invoices were payable had lapsed, although a sufficient balance remained in the appropriation at the time it lapsed, the claim will be allowed where it was made within a reasonable time.

SCHUMAN, C. J.

Claimant, The Texas Company, a corporation, on various dates during periods from April 10, 1947 to June 30, 1947, and from November 4, 1948 to June 30, 1949 furnished gasoline, kerosene, liquid fuels, oils and lubricants, pursuant to purchase orders from the Department of Finance, Division of Purchases and Supplies for the State of Illinois, to the Department of Public Works and Buildings, Department of Conservation, Department of Public Works and Buildings, and Department of Public Safety in the amount of $103.01.

A stipulation was entered into by the parties showing $7.74 was barred by limitation, and a balance of $95.27 is justly due and owing claimant.

Claimant's schedule covering purchases made prior to July 1, 1947 were not received in time to be paid in regular course from the 64th Biennium Appropriations. Purchases between July 1, 1947 and June 30, 1949, for similar reasons, could not be paid from the 65th Biennium Appropriations, respective appropriations lapsing on September 30, 1947, and September 30, 1949.

By the repeated decisions of this Court, it has been held that where the facts are undisputed that the State has received supplies ordered by it in accordance with due authority, and has used the same, and that the bill therefor was not paid before the lapse of the appropriation out of which it could have been paid, an award for the amount may be made. *(Shell Petroleum* Co. v. *State,*

7 C.C.R., 224; *Shonkwiler* v. *State*, 11 C.C.R., 602, and other cases.)

An award is therefore entered in favor of the claimant, and allowed in the amount of $95.27.

(No. 4310—Claimant awarded $956.25.)

HARVEY L. HOUSE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 14, 1950.

ROY A. PTACIN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, employed as an attendant at the Chicago State Hospital by the Department of Public Welfare, suffered a comminuted fracture of the fifth metacarpal of the right hand, which was caused by a patient shoving a table against a bench, thus catching claimant's hand between them, Court held that claimant was entitled to an award under the Act for a 25 per cent permanent specific loss of the right hand.

SCHUMAN, C. J.

Claimant, Harvey L. House, was employed by the Department of Public Welfare at the Chicago State Hospital, Chicago, Illinois. On the 15th day of April, 1950 he suffered an injury to his right hand by reason of his hand being caught between a table and bench, caused by the patients shoving a table against the bench. There are no jurisdictional questions involved, and it was stipulated and agreed that the injury which the claimant received was in the course of his employment; and, that immediate notice was given, and claim was filed at the proper time. The claimant's earnings for the year preceding his injury were $1,775.50. The claimant was 38 years of age, and had no children.

Claimant was treated by Dr. Olsman. X-Rays were taken, but were not introduced in evidence. Claimant

was also seen by Dr. Albert C. Field, mho was the only doctor to testify in the case. Dr. Albert C. Field said that he had examined the claimant on May 24, 1950, and took an X-Ray of his right hand. The X-Ray showed a comminuted fracture of the fifth metacarpal, proximal third, with considerable deformity; that the fragments were not healed, and that the fracture extended into the wrist joint. Dr. Field further stated that the significance of such fracture caused irregularity in the articulating surface, causing an arthritic condition; that the ring finger of the right hand had a limitation in the extension of 30 degrees in the metacarpal and distal phalanges; that the little finger of the right hand had a limitation of extension of **30** degrees, and that, in his' opinion, the condition was permanent. The doctor testified that the man, in his opinion, had **a** 25 per cent total disability of the right hand. This testimony was not objected to, and, as far as the record is concerned, stands conclusive.

William **J.** Cleary & Co. filed a claim for stenographic services in the amount of $41.05. The Court finds that this claim is reasonable.

On the basis of this record, we make the following award:

Twenty-five per cent permanent specific loss of the right hand in the sum of $956.25, payable in weekly installments of $22.50, commencing on April 22, 1950. Thirty weeks of said compensation has accrued to November 11, 1950 in the amount of $675.00, and is payable forthwith, the balance of $281.25 is payable at the rate of $22.50 per week, commencing November 18, 1950 for a period of 12 weeks with one final payment of $11.25.

An award is also entered in favor of William **J.** Cleary & Co. for stenographic services in the amount of $41.05, which is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4312—Claimant awarded $7,500.00.)

HAZEL D. SWITZER, WIDOW, ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November *14,* 1950.

JOSEPH J. BARR, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, ,Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will* be *made* under. Where claimant's deceased drowned while in the course of his employment as a forester for the Department of Conservation, Division of Forestry, Court held that his widow, the claimant, was entitled to an award under the Act.

SCHUMAN, C. J.

Claimant, Hazel D. Switzer, is the widow of Harry D. Switzer, deceased, who was formerly employed by the Department of Conservation, Division of Forestry, of the State of Illinois. Claimant, his widow, seeks an award for the death of her husband under the provisions of the Workmen's Compensation Act.

At the time of the death of Harry D. Switzer, he was survived by Hazel D. Switzer, his widow, and two children, Harry, 14 years of age, and Susan, aged 4; and said widow and children were totally dependent upon him for their support. His earnings during the year preceding his death mere $3,374.12. There. is no dispute that both of the parties were operating under the terms and provisions of the Workmen's Compensation Act, and no jurisdictional questions are involved.

The decedent, Harry D. Switzer, on May 19, 1950, while in the course of his employment, went with Mr.

H. C. Frayer, from Elkin, West Virginia, who was employed by the United States Government in the Forest Service, for the purpose of taking a group of foreign foresters to a certain place on a small island in the Mississippi River west of Ware, Union County, Illinois. The foreign foresters were members of the "Poplar Mission," and included Mr. Rene Rol of Nacy, France, Mr. Ola Borset of Solo, Norway, Dr. G. Houtzagers, of Arnhem, Holland, Mr. Spig Wijkstrom of Jonkoping, Sweden, Dr. Wolfgang Wettstein of Vienna, Austria, Mr. Albert Herbignat of Brussels, Belgium, and Mr. Glenn H. Deitschman of the Central States, Forest Experiment Station, Carbondale, Illinois. Mr. Frayer under the guidance of Mr. Switzer was engaged in inspecting a stand of cottonwood on a small island in the Mississippi River west of Ware, Union County, Illinois. The island is separated from the Illinois shore by a narrow waterway approximately 100 yards in width. During the summer months in periods of little rainfall, the elevation of the water at this point is low and passable by a roadway, but on the date, May 19, 1950, it was necessary to use a boat. The roadway was covered with approximately 4 or 5 feet of water. Midway between the Illinois shore and the island is a low bridge completely covered by water at this time. The bottom of the channel beneath the bridge is probably 6 to 8 feet below the elevation of the bridge.

Members of the party were ferried to the island three at a time in a flat bottom skiff with Mr. Switzer acting as ferryman. When the party had completed its inspection, and after the boat had been bailed out, three of the visiting foresters—Mr. Rol from France, Dr. Houtzagers from Holland, and Mr. Herbignat from Belgium—embarked in the boat with Mr. Smitzer, who sat in the

stern of the boat, and used a single paddle. When the boat reached a point about midway of the crossing at 10 or 12 feet north of the bridge location, the boat seemed to fill rapidly with water, and sank without capsizing. Mr. Switzer, together with the visiting foresters, wore heavy clothing, and had boots on. Apparently Mr. Smitzer sank immediately. Mr. Rol, Dr. Houtzagers and Mr. Herbignat were rescued. The boat was in very poor condition. It had numerous open seams in the bottom, and was water-logged. Attempts were made by the parties to locate the body of Mr. Switzer, but their attempts mere futile; and he was later recovered by means of a grappling hook.

The coroner's inquest was held on May **20,** 1950, and the jury found that Harry D. Switzer came to his death by drowning. The evidence 'showed that the accident occurred about **4** P.M., and that the body of Harry D. Switzer was recovered at about 6 P.M. the same evening. There was appacently no definite testimony as to just what happened to Harry D. Switzer, and some of the witnesses thought that he might have had a heart attack. However, there is no medical testimony in the record that supports this theory. The claimant, Hazel D. Switzer, testified that her husband, Harry D. Switzer, the decedent, was a man of very good health, and had not been treated prior to his death.

Rollin Moore was employed to take and transcribe the evidence before Commissioner Summers. He submitted a statement in the amount of $26.82, which charges are fair, reasonable and customary.

On the basis of the record, an award is entered in favor of Hazel D. Switzer, widow of Harry D. Switzer, the decedent, in the amount of $7,500.00, to be paid to her as follows:

$ 600.00, which has accrued and is payable forthwith;
$6,900.00, which is payable in weekly installments of $24.00 per week, beginning on the 18th day of November, 1950, for a period of 287 weeks, with an additional final payment of $12.00.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act, jurisdiction of this case is specifically reserved for the entry of such further orders as may from time to time be necessary.

An award is entered in favor of Rollin Moore for stenographic services in the amount of $26.82, which is payable forthwith.

This award is subject to the approval of the Governor as provided in Section 3, "An Act concerning the payment of compensation awards to State employees."

(No. 2762—Claimant awarded $2,219.05.)

PAUL H. BOYERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 15, 1950

CLARENCE B. DAVIS AND P. H. WARD, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award *for* medical and *hospital* expenses *of* deceased will be granted. Where claimant filed a claim for medical and hospital expenses expended by the decedent in his lifetime, which were claimed necessary to relieve decedent of injuries sustained, and for which an award had been previously made by the Court, it was held that an award for said hospital and medical expenses should be made.

SCHUMAN, C. J.

Claimant, Cecile B. Hoover, executrix of the estate of Paul H. Boyers, has filed a claim for medical and hospital expenses expended by the decedent, Paul H. Boyers, in his lifetime, which were claimed necessary

to relieve decedent of injuries sustained, and for which an award had been previously made by this Court.

A hearing was previously had a short time before decedent's death, but no conclusion reached because of the death of the said Paul H. Boyers.

The decedent had incurred medical and hospital expenses reasonably required to cure or relieve him from the effects of his injury.

This Court had rendered an award in *Boyers* v. *State*, 9 C.C.R. *530,* and reserved jurisdiction for such further orders as might subsequently be made. An additional award was granted on May 14, 1941 (Boyers v. *State*, 12 C.C.R. *377,* and in *Boyers* v. State, 14 C.C.R. 1) for additional expenses.

Paul H. Boyers died testate on July 23, 1949, and claimant has presented her claim for the following expenses:

Dr. Robert Nelson, Clinton, Iowa (Surgery—Dec. 1946)	$ 200.00
Dr. Charles Waggoner (Assistant to Dr. Nelson, Clinton, Iowa)	10.00
Jane Lamb Hospital, Clinton, Iowa	90.65
Public Hospital of the City of Sterling	1,509.05
Dr. Ralph Redmond, Sterling, Ill.	710.00
Melvins Funeral Home	710.00
Oak Knolls Memorial Park	25.00
Cecile Hoover, for meals furnished **Paul H.** Boyers during illness	1,918.00
	$5,172.70

The evidence shows that the claims of Dr. Ralph Redmond in the amount of $710.00, and the claim of Public Hospital of the City of Sterling in the amount of $1,509.05 mere clearly necessary to relieve the decedent from the effects of his injury. Claimant is, therefore, entitled to an award in the amount of $2,219.05.

An award is, therefore, made in favor of claimant for the benefit of the persons named in the amount of **$2,219.05.**

(No. 4023—Claimant awarded $1,896.67.)

L. BALKIN BUILDER, INC., AN ILLINOIS CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 18, 1950.

Supplemental Opinion filed December 15, 1950.

BROWN, FOX AND BLUMBERG, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

CONTRACT—*when an* ***award will be made under.*** Where claimant entered into a contract with respondent for the making of repairs on substructure and superstructure of a bridge, and respondent pleaded as a defense that the provisions of the "Standard Specifications for Road and Bridge Construction" impliedly was a part of the contract and released them, Court held that contract read in its entirety did not include such provision, and that claimant was entitled to an award.

MODIFICATION OF PREVIOUS AWARD—*in* rehearing. **An** award was made to claimant on April 18, 1950, and Court modified its prior opinion by deducting $81.78, and entering a new award for $1,896.67.

SCHUMAN, C. J.

Claim is brought by L. Balkin Builder, Inc., an Illinois corporation, against. the State of Illinois, which arises out of a contract dated November 26, 1943 for making .repairs on the substructure and superstructure of the bridge over the Illinois River at Peru, LaSalle County, Illinois.

One of the first questions to consider is whether **or** not the "Standard Specifications for Road and Bridge Construction", adopted July **1,** 1942 by the Department of Public Works and Buildings, Division of Highways, is a part of the contract in its entirety. The Departmental Report filed in this Court on February 23, 1949 on page 6 sets forth the following:

"The Standard Specifications for Road'and Bridge Construction, adopted **July** 1, 1942, as supplemented and amended, are to be used only when referred to in this contract as set forth in Paragraph 5.0 of the Specifications, and at no other time. Extra **work** is specifically provided for in the

contract between claimant and respondent under Paragraph XV of the Memorandum of Agreement. Therefore, the provisions of the Standard Specifications, as alleged by claimant, do not apply, and claimant is not entitled to any further payment under this count of the complaint."

There is no express provision in the contract in question making said "Standard Specifications" a part of said contract. The only thing that appears in the record is the testimony of J. A. Todson, Chief of Operations for the Division of Waterways, who stated that general specifications are included in all contracts, and that he referred to "Standard Specifications" adopted July 1, 1942.

Respondent cites *Henkel Construction Company* v. *State of Illinois,* 10 C.C.R. *538.* On page 542 of that opinion the Court specifically held that the pertinent parts of the "General Specifications" pertaining to acceptance of last payment by the contractor were made a part of the contract.

Respondent also cites *Madison Construction. Company* v. *State of Illinois,* 11 C.C.R. 64, but in that case the "Standard Specifications" were specifically made a part of the contract.

Respondent also cites *L. B. Strandberg & Son* Co. v. *State of Illinois,* 13 C.C.R. 49. This case was on a motion to dismiss, and an affidavit filed in support of the motion showed the release provisions of the "Standard Specifications,' were a part of the contract.

Respondent cites *Richardson* v. *State of Illinois,* 14 C.C.R. 3. In that case the "Standard Specifications" were specifically made a part of the contract.

Respondent cites case of *Worden-Allen Company* v. *State of Illinois,* 16 C.C.R. 138. That case was disposed of on a motion to dismiss, and the contract contained a specific provision that "the acceptance by.the contractor

of the last payment shall operate as and shall be a release to the Department . . .''

Respondent cites the case of *Hartmaw-Clark Bros. Company* v. *State* of *Illinois,* **17** C.C.R. **99.** In that case the contract specifically provided "that the **work** be done according to the 'Standard Specifications'''.

In looking at the contract we can find no such provision as contended for by the respondent. On the contrary, according to the Departmental Report, the "Standard Specifications" were only to be used when referred to in the contract.

In the case at bar no defenses were raised as to payment. Even though they were not raised, if the contract had the applicable provisions of the "Standard Specifications" as to release set forth, such provisions would be binding on the claimant. The Court concludes that the claim of a release is not meritorious.

In disposing of the above questions, it then becomes necessary to determine whether or not claimant is entitled to the relief prayed.

Under Count I of the complaint, the Court concludes as *to* paragraph 6 that claimant should be allowed **44** F.B.M. of new lumber, which figured at the rate specified of **$373.00** per thousand would amount to **$16.41.**

Under paragraph **7** the Court concludes claimant is entitled to **157** F.B.M. for salvaged lumber, which figured at the rate specified of **$293.00** per thousand would amount to **$46.00.**

Under paragraph 8 the evidence shows that **341.25** cubic yards of concrete were purchased by claimant for the particular job. Claimant's Exhibit **6** shows 5 cubic yards wasted. This deducted from **341.25** cubic yards leaves **336.25** cubic yards. Claimant was paid for **330.8** cubic yards leaving **5.45** cubic yards for which payment

should be made. This figured at $56.50 per cubic yard would amount to $307.92.

The claims under paragraphs 9 and 10 are denied.

Under Count II the evidence shows the work performed was not in the original plans, and that new plans were submitted. Therefore, claimant is entitled to the sums claimed in paragraph 2(a), 2(b), and 2(c) in the amount of $214.80.

The installation of fender timbers were not shown on the plans, and claimant should be allowed the amount claimed under paragraph 2(d) in the amount of $568.13.

Paragraph 2(e) is denied, as the State allowed one-half of this amount on a questionable item.

There is no competent evidence as to value under Count III, and this amount is denied. The question as to the definition of the word "disposal" is not decided.

Count IV claims additional amounts for extending foundation down 4' below the contract line. Claimant's Exhibit 18 shows the installation of the concrete jacket was to extend to the bed of the stream, and specifically provided that the contractor was to verify all measurements in the field, and this was borne out by claimant's own evidence. Claimant contends 'Standard Specifications', applies, although the contract does not so specify. Claimant alleged in its complaint that respondent requested the concrete jacket be extended four feet below the contract line. This is not borne out by the evidence. If claimant desires to be bound by the "Standard Specifications", then its entire claim would have to be disallowed under the decisions previously stated. Claimant in its brief states that "Standard Specifications" only applied in specific instances. To this both sides agree. Under paragraph 3 of the contract the contractor agreed that it would satisfy itself as to all conditions affecting

the work. For the reasons assigned, the claim in Count IV is disallowed.

There is no dispute as. to Count V, only respondent states that the prevailing rates for labor attached to the contract were minimum. Under paragraph 19 of page 4(b) on information to bidders, the Court is of the opinion that prevailing rates in the area were to be paid, and claimant is entitled to the additional amount claimed of $825.19.

The Court concludes claimant is entitled to recover the sum of $1,978.45.

An award is entered in favor of claimant in the amount of $1,978.45.

SUPPLEMENTAL OPINION

SCHUMAN, C. J.

The Court on rehearing has considered the intent and purpose of the statute "Wages on Public Works", and concludes that said statute was to remedy the evil of haying wages under the prevailing rate in the locality where the work was to be done, and does not affect the contractual provisioiis between the State and claimant in this case.

In fact the statute provides a declaration of policy that the State in letting public contracts shall require the payment of prevailing wage rates in the community where work is to be done, and the State shall not be a party to sub-standard wage cutting.

In the contract it is provided that, if rates determined by the Department are superseded after the award of the contract, adjustments are to be made.

Evidence was submitted showing that the prevailing rate was different in the locality where the work was

performed. The items as to insurance will be deducted from the amount' paid, which mas $81.78, and the opinion modified to reduce the amount of $825.19 to $743.41.

Opinion is modified to show an award in the sum **of** $1,896.67.

An award is entered in favor of claimant in the amount of $1,896.67.

(No. 4152—Claimant awarded $1,546.89.)

ROBERT B. RADFORD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed ***December*** *IS,* ***1950.***

ROBERT H. ALLISON AND HERBERT N. TRAGETHON, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—***when an award will be made under.*** Where claimant, employed as an attendant at the Peoria State Hospital by the Department of Public Welfare, had an altercation with one of the patients and suffered injuries, consisting of fractured ribs, and later diagnosis confirmed a diaphragmatic hernia for which he underwent surgery, and after said operation he suffered weakness and numbness of both feet and finally developed a persistent drop of the left foot, Court held that claimant was entitled to an award under the Act for temporary total disability, and for a 35 per cent specific loss of use of the left leg.

SCHUMAN, C. J.

Claimant, Robert B. Radford, 62 years of age, was employed on June 17, 1948 by the Department of Public Welfare, State of Illinois, at Peoria State Hospital, and was working the shift from 3:00 P.M. to 11:00 P.M. in Ward Z-3, called the receiving ward. Claimant was married, but there is no proof of any children under 16 years of age.

No jurisdictional questions are raised,. and injuries

of claimant were sustained in the course of his employment.

Claimant's earnings for the year preceding his injury were $1,997.00.

At about 7:45 P.M. on June 17, 1948 an altercation ensued between claimant and **a** patient by the name of Lester Moomaw. Claimant received very painful injuries, consisting of fractured ribs, and a later diagnosis confirmed a diaphragmatic hernia for which he underwent surgery. After the operation Claimant suffered weakness and numbness of both feet and lower extremities, and complained of pain in left shoulder. Claimant has a persistent foot drop of his left foot, and it is necessary for him to wear a brace to correct this. Dr. Lloyd Finley Teter's report admitted, without objection, that claimant had 25 to 50% total and permanent loss of the use of his left leg. It is apparent that the condition of claimant's leg resulted from his injuries, and the treatment therefor.

All hospital and medical expenses have been paid by respondent. Claimant expended the sum of $195.60 for expenses to and from various doctors and hospitals authorized by respondent, for this claimant should be reimbursed.

On the basis of this record the Court concludes claimant has sustained **a** *35%* permanent specific loss of use of the left leg. Claimant was temporarily permanently disabled for 47 6/7 weeks for which he is entitled to compensation at the rate of $19.50 per week, or $933.21. During his temporary disability claimant was paid by the department the sum of $878.67. This deducted from $933.21 leaves **a** balance due of $54.54.

Stenographic services at the hearing were furnished and reported by Johnson Fleming, for which he has sub-

mitted a statement in the amount of $65.70, which the Court finds to be reasonable.

On the basis of the record the Court makes the following award:

For temporary total disability to claimant balance due $54.54, which has accrued and is payable forthwith.

For 35% specific loss of use of left leg of claimant, 66½ weeks at $19.50 per week for a total of $1,296.75, all of which has accrued and is payable forthwith.

The sum of $195.60 to claimant for money necessarily expended by him to receive treatment for his said injuries.

The sum of $65.70 for stenographic services, payable to Johnson Fleming.

This award is subject-to the approval of the Governor, as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4208—Claimant awarded $1,003.00.)

ROBERT L. MIDDLETON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 15, *1950.*

ROY A. PTACIN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S *COMPENSATION Am—when an award will be made under.* Where claimant, employed as an attendant at the Chicago State Hospital by the Department of Public Welfare, suffered a fracture at the proximal end of the first metacarpal of his left hand when he caught same between two large cans of food that he **was** helping to unload from a truck at the Hospital, and it later developed that it caused a traumatic arthritis, Court held that claimant was entitled to an award under Section 8 (a) (e) **(12)** of the Act for a **30** per cent loss of use of his left hand.

LANSDEN, J.

Claimant, Robert L. Middleton, seeks to recover from respondent under the Workmen's Compensation Act for a partial loss of use of his left hand as a result of an accident that arose out of and in the course of his employment as an attenclaiit at the Chicago State Hospital, operated by the Department of Public Welfare.

On April 10, 1949, claimant was working with some patients unloading large cans of food from trucks. The food containers mere slid along the floor, and a patient, in sliding one of such cans, caught, and wedged claimant's left hand between two such cans.

The full extent of 'claimant's injuries was not 'at first diagnosed by X-Rays. However, some weeks later it mas discovered that claimant had sustained a fracture at the proximal end of the first metacarpal of his left hand. This fracture extended into the metacarpal articulation. The fragment was displaced medially. This injury mas very painful, the pain being centered over the thenar eminence. Claimant cannot bring his left thumb and little finger in contact. There is a grating at the articulation involved when the thumb is moved. Flexion is limited at that point, and loss of grip is evident. Claimant can no longer perform simple functions like buttoning his coat or shirt with his left hand. There is definite indication cf traumatic arthritis. All these findings are considered to be permanent.

Dr. Albert C. Field testified for claimant. Dr. Louis Olsman testified for respondent. Commissioner Tearney has reported his observations of claimant's left hand at the hearing. All three agree exactly on the extent of claimant's partial loss of use of such hand.

This phalanx of unanimity leaves this. Court no choice but to follow such uncontradicted testimony and

opinions, and we hold that claimant has sustained a 30 per cent loss of use of his left hand. Our conclusion is also buttressed in part by the case of *Smith* v. *State*, 18 C.C.R. 164, which involved **a** similar injury to an employee at the Chicago State Hospital, and, in which the same counsel appeared, and the same doctors testified.

No jurisdictional questions are involved, and except for $8.50 paid for by claimant, respondent has furnished all medical services.

Claimant lost no time from his job, so there is no question concerning temporary total disability.

On the date of his accident, claimant was 41 years of age, married, with one child, Vernell Middleton, aged 15, dependent upon him for support.

Claimant had not been employed for one year prior to. his accident, but employees in the same category earned an annual wage of $1,650.00. Claimant's rate of compensation is, therefore, $19.50 per week.

William **J.** Cleary & Co., Court Reporters, Chicago, Illinois, was employed to take and transcribe the testimony before Commissioner Tearney. **A** statement in the amount of $42.00 has been rendered for such services, which is reasonable and customary. An award is, therefore, entered in favor of such firm in the amount of $42.00.

An award is entered in favor of claimant, Robert L. Middleton, under Section 8 (a) (e) (12) of the Workmen's Compensation Act for medical expenses, incurred, and paid for by him, in the amount of $8.50, and, in addition, for **a** 30 per cent loss of use of his left hand, being 51 weeks at $19.50 per week, or the sum of $994.50, making a total award of $1,003.00, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 4214—Claim denied.)

DARWIN EYRE, Claimant, ***vs.*** **STATE** OF ILLINOIS, Respondent.

Opinion fled December IS, 1950.

DAVID E. ORAM, Attorney for Claimant.

IVAN A. **ELLIOTT,** Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an *award will be denied.* Where claimant, employed as a highway section man by the Division of Highways, suffered minor injuries to his back while performing work assigned to him of unloading bagged cement, and later had an operation which corrected it, and later resumed work, making as much money as prior to the accident, Court held that he did not make out a case, and denied an award **for** either temporary or permanent disability.

SCHUMAN, C. J.

Claimant, Darwin Eyre, was employed by the State of Illinois, Division of Highways, as a highway section man commencing on April 3, 1941. On July 10, 1949 claimant received an injury to his back, while performing the duties assigned to him, and unloading bagged cement from a railroad freight car from the Illinois Central Railroad siding at Buckley, Illinois.

At the time of his injury on July 10, 1947, claimant was married, and had three children under the age of 16 years dependent upon him for support, and his earnings for the year preceding the injury were $2,214.12.

No jurisdictional questions were raised. Respondent and claimant were operating under the Workmen's Compensation Act, and the accident in question arose out of and in the course of employment.

Claimant's work history showed that he had sustained minor injuries to his back, while performing work for respondent on April **3,** 1945, July 20, 1946, and October 28,1946. On July 10,1947, while carrying the cement, as stated, and, after he had carried about 25 or 30 bags of cement, he felt a sharp pain in his back, and dis-

continued carrying cement, and continued his supervising duties.

Because of continued pain in his back, the claimant called on his family physician, Dr. A. R. Zunkel, at Buckley, Illinois on-July 12, 1947. Dr. Zunkel made a diagnosis of ureteropyelitis, and suggested to claimant that he may have displaced some of his internal organs.

On July 24, 1947 claimant reported his condition to the Division of Highways, and asked for treatment. The Division obtained a report from Dr. Zunkel on August 14, 1947, and because of the report, a question arose as to whether or not the claimant had suffered a compensable injury. As a result the Division sent the claimant to Dr. H. B. Thomas in Chicago, an orthopedic surgeon. Dr. Thomas informed the Division that claimant had a spina bifida ccculta, and that the accident had exaggerated it, and suggested that he have an operation and fusion be created. Claimant mas examined by Dr. T. P. Grauer, a specialist in urology. An operation was performed-on claimant on September 9, **1947** and from the doctor's report the following is taken:

> "The loose fifth lamina was removed and the 5th sacral and 4th and 5th interspaces examined, but no evidences of protrusion. Since there were no spinous processes on any of the sacral vertebrae, the lower end of the grafts had to be laid upon grooves which were cut into the sacral wall. This was joined with the fourth and third lumbar vertebrae."

After the operation, claimant was released from the hospital on September 22, 1947, 'and returned home. On December 23, 1947, claimant was again examined by Dr. Thomas, X-Rayed, and was dismissed to return to **work** on light duty on January **1,** 1948. On February 20, 1948, claimant mas again examined, and the X-Ray taken on December **23,** 1947 indicated that there mas evidence of bone graft involving the spinous processes of the 4th and 5th lumbar and the first sacral segments; that align-

ment and position were good, callus was present, and that the prognosis was good. On April 21, 1948, the claimant was examined by Dr. Thomas, and again on May 25, 1948. At that time Dr. Thomas-thought he had a 15 per cent disability of the low back. On November 4, 1948, claimant was again examined by Dr. Thomas and X-Rayed. As a result of said examination Dr. Thomas sent a report to the Department on November 15, 1948, and stated in the report that he found everything perfectly normal. Dr. Thomas again examined claimant on January 11, 1949, and stated that he would have a maximum disability of about 20 per cent. He again examined him on February 8, 1949, and said that he would dismiss him with a 10 per cent temporary disability. On February 14, 1949, Dr. Thomas wrote a final report indicating that the claimant's complaints were mental, and that claimant would improve after he was dismissed.

Claimant returned to light work on January 1, 1948, and at the time of his discharge on February 20, 1949 he was performing his regular duties.

Claimant was totally disabled from August 21 to August 28, 1947, and from September 9 to December 31, 1947. He was paid full salary for the period of August 21 to August 28, 1947, and September 9 to September 28, 1947; and, compensation at the rate of $23.40 per week for a period of September 29 to December 31, 1947, the total payments, being in the amount of $475.76.

The present claim is for further medical expenses, compensation for additional temporary total disability, as well as compensation for total and permanent disability. The evidence in this case revealed that the claimant made a complete and satisfactory recovery, returned to his regular occupation, and worked steadily until his discharge from the Department on February 20, 1949. The

evidence further shows that after he left the Division of Highways he earned $4,000.00 in the year following, and the only testimony in the record to the contrary was that he had not earned any money in the yeas 1950. There is no testimony in the record as to inability to work, or differences in earning power, but on the contrary it was apparent that he had earned more in subsequent employment than he did while working for the State. The only testimony in the record of his inability to work was that he could not do manual labor with a shovel. In addition to lack of testimony with reference to a compensable injury at the time of the filing of the claim, there was no testimony in the record that would serve for a total permanent disability, or for permanent, partial disability. For this reason an award will have to be denied.

Beverly J. Decker, 509½ South Fourth Street, Watseka, Illinois has submitted a statement in the amount of $49.00 lor stenographic' services, which is found to be reasonable, and an award is entered in the amount of $49.00 to Beverly J. Decker.

Award denied.

(No. 4250—Claimant awarded $517.85.)

GEORGE DYKHUIZEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion fled December 15, 1950.

BULL, YOST AND LUDENS, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMFTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where award will* be *made* ***under.*** Where an employee of the Division of Highways, State of Illinois, is injured while unhooking the trailer of a State truck, which he was authorized to drive and while in the course of his employment, Court held he was entitled to an award under the Act for loss of function in his back. The injury was

shown to have been the direct result of the accident. Section 8 (d) of the Workmen's Compensation Act applies.

What constitutes a permanent partial disability. In order for claimant to sustain a claim for permanent partial disability it is essential to prove an actual disability, and, in the event of such disability, he must show the differential between what he earned before the accident and what he is earning or able to earn in some suitable employment after the accident.'

SCHUMAN, C. J.

Claimant, George Dykhuizen, was employed by the Division of Highways, State of Illinois, on January 1, 1924. On July 1, 1947 claimant was a maintenance equipment operator, was married, and had one child under 16 years of age. His earnings in the year preceding his injury totaled $2,043.51.

On July 1, 1947, Mr. Dykhuizen was one of a group of men assigned to move a crane trailer to a point on Whiteside County State Aid Road 14, approximately 10 miles west of Morrison. The trailer was attached to a truck. Having arrived at the desired location at approximately 10:00 A.M., Mr. Dykhuizen and his helper proceeded to disengage the trailer from the truck. The assistant, Mr. Jason Bennett, of Morrison, held the trailer tongue, and supported the truck endgate as Mr. Dykhuizen unhooked the trailer. While in this position, the truck moved forward, causing Mr. Bennett to lose his balance and let loose of the endgate, which struck Mr. Dykhuizen on the head as it fell. Mr. Dykhuizen was rendered unconscious by the blow. Mr. Bennett called an ambulance, and Dr. Ward B. Manchester, of Morrison, who sent Mr. Dykhuizen to the Morrison Hospital.

Medical testimony of Dr. Manchester diagnosed a fracture of the 4th thoracic vertebra. Because of lack of improvement, he was sent to Dr. H. B. Thomas, orthopedic surgeon, in Chicago, Illinois. On January 7, 1948 Dr. Thomas made his first examination, and had claimant

hospitalized. at St. Luke's., The result of Dr. Thomas' examination disclosed muscle spasm of all neck. muscles.. Claimant was also 'examined by Dr. Robert G. McMillan, neurologist, who reported "Neurological examination does not confirm any definite diagnosis." Dr. Wesley **A.** Gustafson examined claimant, and his impression was that claimant had a mild cervical disc syndrome. Dr. Thomas again saw claimaiit on March 24, 1948.

Dr. Robert G. McMillan, psychiafrist, examined claimant on January 10, 1948, and reported no unusual findings.

Dr. Thomas examined claimant again on May 18, ,1948 and on May ***26,*** 1948 and reported:

"There is a slight depression posterior upper skull mentioned in **one** of our former letters as an injured area; otherwise the examination is negative. There is a numb feeling felt frequently, particularly when fatigued, in the left outer thigh. He hasn't had any physic for about two weeks. I am recommending dismissal at this time, allowing him to continue with the work he is doing to save himself, until the effects of the concussion as illustrated in the head dizziness and leg numbness disappears."

On June 16, 1948, Dr. W. A. Gustafson, Assistant Professor of .Neurological Surgery, Illinois University, examined claimant, and reported:

"Neurological examination revealed pain upon compression of the head, pain paravertebrally upon percussion, and pain on rotation of the head. No other abnormaiity was found. Lumbar puncture was done, and this revealed clear, colorless fluid, total protein 'of 38 millimeters per cent,. and a normal colloidal gold curve.

It was my impression that he **was** suffering from a mild cervical disc syndrome and my recommendations were cervical traction to be followed by cervical collar. He was treated symptomatically. at St. Luke's Hospital and later dischargcd."

Dr. Thomas on December 2, 1948 wrote the following report :

"I spent a good deal of time with Mr. George Dykhuizen on November 23.

"He had a very bad concussion about July I, 1947. He has .done **won:** derfully in recovering. All his symptoms, which are principally headache,

dizziness, and pain down the left thigh, are due to his concussion, and are exaggerated. Evidently he overworks. I believe he will continue to improve, provided he is able to work cautiously and not exert himself to the point where he knows he is irritating the brain condition, which continues to exist, even one and one-half years after the trauma; and the best medicine for him is what he can do for himself.

"My suggestion for him is to work, but when he begins to feel the least bit tired he should go home and rest."

and, again on February 8, 1949, Dr. Thomas submitted the following report:

"I examined Mr. George Dykhuizen this morning. Findings are absent. He complains of pain in head and nervousness at intervals; I think he is truthful. He states he is better than a year ago.

"I believe he will improve as time goes on. He is doing light work. I am dismissing him with 15 per cent temporary disability. In my opinion there will be no permanent disability."

Because of his injury of July 1, 1947, Mr. Dykhuizen was totally disabled July 2 to 21, 1947, and December 20, 1947 to March 14, 1948, all dates inclusive. He was paid full salary in lieu of compensation July 2 to 15, 1947 in the amount of $84.46; December 20, 1947 to January 7, 1948 in the amount of $74.62; and compensation at the rate of $19.50 a week from July 16 to July 21, 1947, inclusive, in the amount of $16.71; and January 8 to March 14, 1948, inclusive, in the amount of $186.65; or a total of $203.36. The periods of total temporary disability equaled 15 1/7 weeks, and combined payments for total temporary disability equaled $362.44.

In addition to the payments for lost time mentioned in the preceding paragraph, Mr. Dykhuizen mas paid full salary for the days he was unable to work because of trips to Chicago for treatment after March 14, 1948. These trips occurred on the following dates: March 24, 1948, May 18, 1948, May 26, 1948, November 23, 1948 and February 8, 1949. Payments for lost time resulting from these trips totaled $33.24.

All medical bills and hospital bills mere paid by

respondent including claimant's expenses to Chicago.

No jurisdictional questions are presented.

Claimant alleges a permanent partial disability, and claims a loss of earning capacity. In order for claimant to sustain a claim for permanent partial disability it is essential to prove an actual disability, and in the event of such disability he must show the differential between what he earned before the accident, and what he is earning or able to earn in some suitable employment after the accident.

Dr. Thomas in his final report stated that in his opinion there will be no permanent disability.

Dr. Manchester thought his condition mas largely one of a neurotic, and estimated the' claimant had at least a 25 per cent disability. Dr. Manchester thought claimant sustained a fracture of the fourth thoracic vertebra.

The Court concludes from the evidence that no case of a permanent partial disability has been sustained. However, from the evidence, and the testimony as to the fracture of the vertebra, the claimant has sustained a loss of function in the back, and under Section 8 (d) of the Act is entitled to compensation for 30 weeks.

Stenographic services were rendered by William J. Cleary & Co. in the amount of $84.40, which the Court finds to be reasonable.

An award is entered in favor of claimant for loss of function of back for 30 weeks at the rate of $19.50, or a total of $585.00, less overpayment of $6'7.15 for non-productive time, or a net award of $517.85, all of which has accrued and is payable forthwith.

An award is entered in favor of William J. Cleary & Co. for stenographic services in the amount of $84.40, which is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State' employees."

(No. 4268—Claimant awarded $320.00.)

ELMWOOD CEMETERY COMPANY, AN ILLINOIS CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 15, 1950.

BIPPUS, ROSE, BURT AND PIERCE, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

MATERIALS AND SUPPLIES—*when* claim will be allowed for payment even though Statutory Limitations precluded its payment. Where claimant placed markers in its cemetery in accordance with directions from the Military and Naval Department of the State of Illinois, and the bill therefor was not paid because of the lapse of the appropriation out of which it could have been paid, an award for same may be made.

SCHUMAN, C. J.

The claimant filed its claim for the installation of 44 government markers placed in Elmwood Cemetery at the graves of the parties mentioned in the complaint.

The Military and Naval Department in its report filed June 10,1950 in this Court showed that two markers had been paid, and ten would be allowable from its current biennium, since installation dates were since July 1, 1949.

A stipulation was filed that claimant is entitled to the sum of $320.00 for 32 markers listed in said stipulation.

Where the markers have been received as ordered in accordance with due authority, and used, and the bill was not paid because of the lapse of the appropriation out

of which it could have been paid, an award for the amount may be made.

An award is, therefore, entered in favor of the claimant in the amount of $320.00.

(No. 4270—Claim denied.)

MAE AKIN, WIDOW, **ET AL,** Claimant, ***VS.*** **STATE** OF **ILLINOIS,** Respondent.

Opinion filed December **15,** 1950.

WAYNE P. WILLIAMS, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. **ARTHUR** NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where award will not be made under, because death of deceased did not arise out of or in course of employment.* Where deceased, employed as an investigator for the Department of Revenue of the State of Illinois, failed to follow the rules of his department, which specifically stated that an employee must first submit in writing and receive aotliorization before making a trip to the office in Springfield, Illinois, and was killed in a car owned by the State and driven by a State employee, and although said deceased was allegedly enroute to Springfield on official business, the claimant, his widow, was not entitled to an award under the Act.

SAME—*What constitutes not being within the course of employment so as to come under the Act.* It is a well established rule that an employee, who is injured while performing acts prohibited by the rule of the employer, is not entitled to compensation. One who is employed to work in a certain field of endeavor, who departs from that work without authority, and is injured in so doing, is not entitled to an award under the provisions of the Workmen's Compensation Act. The death of decedent did not arise out of and in the course of his employment.

DELANEY, J.

The claimant, Mae Akin, widow of Russell Akin, filed her complaint on February 11, 1950, seeking an award under the Workmen's Compensation Act for the death of her husband on July 21, 1949, as a result of injuries sustained on July 18, 1949 in an autcmobile accident, arising-out of and in the course of decedent's employment by the respondent. At the time of his death,

Russell Akin was employed by the Department of Revenue of the State of Illinois as an investigator.

At the time the accident occurred, Mr. Akin was on his way to Springfield. Mr. Don Irving, an employee of the Secretary of State, was driving the automobile at the time the accident occurred, approximately five miles east of Jacksonville, Illinois. Mr. Irving was driving a 1949 Ford automobile, which was owned by the State of Illinois at the time of the accident. Mr. Akin and Mr. Irving had made an arrangement between themselves to go to Springfield. Mr. Akin's work required him to travel. He normally used his own car, and mas allowed mileage by the State of Illinois for the use of his car in his employment.

The record consists of the complaint, departmental report, transcript of evidence, statement, brief and argument of claimant, and statement, brief and argument of respondent.

The record shows that Mr. Akin intended to visit the office of Charles V. Morris, the Supervisor of Investigation of the Department of Revenue, while in Springfield. The claimant, however, does not deny the rule of the department in which the deceased worked, which precluded the deceased from traveling to Springfield as *a* part of his employment in the department. The rule is set forth as a part of the Departmental Report, which has been macle a part of the record. The provision is as follows:

(D) *Contacting the Springfield Office*

"When you find it necessary to make a trip to the Springfield Office, you must first submit your request in writing to the office, explaining your reason **for** coming in, and, upon receipt of this letter, we will notify you whether *or* not the trip may be made. It is necessary that you adhere to this policy **if** you, expect to be reimbursed for your tnp to Springfield. Attach a copy of such requests to your monthly expense account.

You are not to contact the Springfield Office by telephone except in unusual instances where a letter will not accomplish the end desired. Take up everything possible with the field supervisor."

The Claimant makes no proof that the deceased complied with this rule, nor does she deny that the rule existed. The claimant contends that certain evidence was improperly excluded. However, we do not feel that this would change the opinion of the Court.

It is a well established rule that an employee, who receives injuries while performing acts prohibited by the rule of the employer, is not entitled to compensation.

Diefzen v. *Ind. Bd.*, 279 Ill. 11;
Nelson Construction Co. v. *Ind. Com.*, 286 Ill. 632;
Lumaghi Coal Co. v. *Ind. Corn.*, 318 Ill. 153;
Steel Corporation v. *Ind.* Corn., 385 Ill. 504;
Paluchowski v. *State*, 9 C.C.R. 492.

One who is employed to work in a certain field of endeavor, who departs from that work without authority, and is injured in such work, is not entitled to an award under the provisions of the Workmen's Compensation Act. The death of decedent did not arise out of and in the course of his employment.

Award is denied, and the complaint dismissed.

Henry P. Keefe, reporter, has rendered a statement for $27.20 for the reporting and transcribing of the notes.

An award is, therefore, entered in favor of Henry P. Keefe for reporting and transcribing the testimony in this case in the amount of $27.20.

(No. 4292—Claimant awarded $1,969.50.)

MYRL LEONARD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 15, 1950.

GILLESPIE, BURKE AND GILLESPIE, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION *ACT—where award will be made under.* Where an employee of the State of Illinois, Department of Public Welfare, fell into an excavation, while making a routine inspection of a State Cottage pursuant to her duties as a Chief Nurse for her department, and sustained a comminuted fracture of the right tibula and fibula, Court held she was entitled to an award under the Act for 50 per cent permanent partial specific loss of **use** of her right leg.

SCHUMAN, C. J.

Claimant, Myrl Leonard, was employed by the State of Illinois, Department of Public Welfare, as Chief Nurse in the East Moline Hospital, and was so employed for approximately 39 years. On July 22, 1949 she sustained an injury, and at that time she was 60 years of age, had no dependent children, and was earning $402.00 per month. Her earnings for the year immediately preceding the injury were $4,119.74.

No jurisdictional questions are raised. Respondent and claimant were operating under the Workmen's Compensation Act, and the accident, arose out of and in the course of employment.

On July 22, 1949 the claimant, while in the course of her duties as Chief Nurse, and in making a routine inspection of Shafner Cottage, was injured as a result of falling into an excavation in the basement of said cottage ; and, as a result of the fall, sustained a comminuted fracture of the right tibia and fibula approximately three inches below.the knee. She was hospitalized immediately, and was attended by Dr. Graham of Moline, Illinois. Her leg was in traction for 33 days, and she was hospitalized until December 18, 1949, a period of approximately 5 months. There is no evidence in the record that she has yet returned to work.

During the period of claimant's disability, she re-

ceived one month's salary of $402.00, and five months at 60 per cent of $402.00, making the total payments in the amount of $1,608.00.

The evidence in this case shows that the claimant suffered a rather severe injury to her right leg as a result of the fall. The medical testimony, and the examination made at the hearing on August 1, 1950 indicated a permanent partial disability of her leg.

Under the Compensation Act she would be entitled to 64 weeks for temporary total disability at $22.50 per week, making a total award of temporary total disability of $1,440.00. She has already received $1,608.00, so there is an overpayment of $168.00.

From the evidence in the record, the Court concludes that the claimant is entitled to 50 per cent loss of the use of the right leg, which would make an award of 95 weeks at $22.50 per week, or $2,137.50.

The proceedings were reported by Hugo Antonacci, 503 Ill. National Bank Bldg., Springfield, Illinois. He has submitted a statement in the amount of $49.30 for stenographic services, which the Court finds to be reasonable.

On the basis of the record, we make the following award:

For the permanent partial specific loss of use of the right leg, claimant is entitled to an award of $2,137.50 for 50 per cent loss of use of the right leg, or a period of 95 weeks at $22.50 per week. From this should be deducted the overpayment of $168.00 making a net award of $1,969.50, of which $34.50 has accrued, leaving a balance of $1,935.00 payable in weekly installments of $22.50 per week, commencing on December 23, 1950 for a period of 86 weeks.

An award is entered in favor of Hugo Antonacci

for the report of the proceedings in the amount of $49.30, which is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4311--Claimant awarded $507.65.)

BEULAH SPENCER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion ***filed December 15, 1950.***

McCARTHY AND McCARTHY, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where award will be made under.* Where a cook, working in a State Hospital as an employee for the Department of Public Welfare, fell while attempting to place a fan on a cabinet and sustained an injury to her right foot and ankle amounting to 10 per cent permanent partial specific loss of the use of the right foot, Court held she was entitled to an award under the Act.

SCHUMAN, C. J.

Claimant, Beulah Spencer, was employed by the State of Illinois, Department of Public Welfare, at the Elgin State hospital as a cook on July 4, 1949, and was earning $171.00 per month. She was married, but had no dependent children. Her earnings during the year immediately preceding her injury on July 4, 1949 were $1,830.00.

No jurisdictional questions are raised. Respondent and claimant were operating under the Workmen's Compensation Act, and the accident in question arose out of and in the course of her employment.

On July 4, 1949, claimant was engaged in her duties as a cook, and, because of the weather, she was using a fan. In attempting to place the fan on a cabinet, she

'stepped up on a chair, which slipped and caused her to fall, resulting in an injury to her right foot and ankle. She was given immediate attention at the hospital, where she remained until October 28, 1949, when she returned to 'her home under the doctor's care, and returned to work on February 1, 1950. Since February 1, 1950 she has worked continuously, although she complained of pain and disability to the right foot.

The evidence showed that claimant paid 'the following additional expenses as the result of her injury, to-wit:

McBridge Pharmacy for ankle braces	$ 3.75
West Health System for treatments	102.00
Kinney Shoe Store for pair of shoes on recommendation of the Doctor	8.11
Making a total of	$113.86

By stipulation of the attorneys for the claimant and the respondent it was shown that claimant received a total of $588.17 for non-productive time. Claimant's period of temporary total disability from the date of July 4, 1949 to February 1, 1950 was a period of 30 1/7 weeks at $22.50 per week. She should have received $678.21, leaving a balance of $90.04 to be paid on temporary total disability.

The evidence discloses, together with the examination by the Commissioner, that the claimant has some permanent disability of the right foot. The conclusion drawn from said testimony is that claimant has suffered a 10 per cent permanent partial specific loss of the use of the right foot, which would be 13½ weeks at $22.50 per week, or a total of $303.75.

The evidence was transcribed by D. V. Sheffner, Geneva, Illinois, and the statement is in the amount of $28.00, which the Court finds to be reasonable.

On the basis of this record, we make the following award :

For temporary total disability for a period of 30 1/7 weeks at $22.50 per week, or $678.21 less $588.17 leaving a balance of $90.04; for doctor and medical expenses expended by claimant $113.86; for 10 per cent permanent partial specific loss of the use of the right foot 13% weeks at $22.50 per week, or a total of $303.75; for a total award of. $507.65, all of which is due and accrued, and is payable forthwith.

An award is also entered in favor of D. V. Sheffner for stenographic services in the amount of $28.00.

The award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4327—Claimant awarded $60.00.)

ROSELAWN MEMORIAL PARK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion filed December* 15, 1950.**

ROSELAWN MEMORIAL PARK, Claimant, pro se.

IVAN A. ELLIOTT, Attorney General; C.. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

MATERIALS AND SUPPLIES—*when claim will be allowed for* ***payment even though Statutory Limitations precluded its payment.*** Where claimant placed headstones and markers on respective veterans' graves, but was denied payment therefor due to Statutory Limitations because funds for the 65th Biennium had lapsed, the Court stated claimant was entitled to an award, because it submitted invoices to respondent within a reasonable time after completion of the work, and when said markers were erected there remained a sufficient balance in the appropriation from which payment could have been made.

DELANEY, J.

On August 15, 1950, claimant, Roselawn Memorial Park, a corporation, filed its complaint alleging that it

erected headstones or Government Markers at the respective veterans graves, and presented a statement attached thereto and made a part of said complaint, and make this claim in the amount of $60.00 against the State of Illinois, the respondent herein.

This claim was denied due to Statutory Limitations, the markers having been placed prior to July 1, 1949, when funds for the 65th biennium lapsed.

The record consists of the complaint, motion of the Attorney General for an extension of time to November 1, 1950 in which to plead, in which it is stated that the motion is made for the purpose of allowing the Adjutant General sufficient time to investigate and report upon the facts alleged in the complaint, and the report filed by the Adjutant General.

We find from the record that claimant has erected the headstones or Government Markers on the veterans graves as set forth, submitted its invoices to the respondent within a reasonable time, and has not received payment. When the markers were erected, there remained a sufficient balance in the appropriation from which payment could have been made. Claimant is, therefore, entitled to an award.

An award is, therefore, entered in favor of the claimant, Roselawn Memorial Park, in the sum of Sixty Dollars ($60.00).

(No. 4227—Claim denied.)

AUTO *ELECTRIC* COMPANY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 9, 1951

CRAIG AND CRAIG, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

LIMITATIONS — what *constitutes.* Where claimant furnished materials to the Division of Highways of the State of Illinois from September 18, 1946 to November 14, 1946, and then did not file a claim with the Court of Claims until September 22, 1949, the Court stated that the claimant was not entitled to an award because the claim was not filed within two years after it had first accrued, and **was** barred by the two year limitation established in the Court of Claims Law.

SCHUMAN, C. J.

This case was heard upon the Motion to Dismiss of respondent, and upon oral argument and written briefs submitted by the parties. From the Bill of Particulars filed by respondent, the last item upon which the claim was based was sold and delivered on November 14, 1946. The claimant had previously filed a claim for materials furnished the respondent at the request of the Division of Highways, which appears in 17 C.C.R. **202,** and which was for a period from April 14, 1947 to June 23, 1947. This claim, as allowed by the Court, was for materials furnished practically a year after the materials were furnished, as claimed in the present case. It is the opinion of the Court that the .materials furnished were under specific appropriations, and the fact that the Auto Electric Company continued to furnish materials under the different appropriations would not make it a separate account.

The Court is limited in its jurisdiction, in considering claims, to those that are filed within two years after they first accrue. Inasmuch as this claim was spe-

cifically based for materials furnished from September 18, 1946 to November 14, 1946, the claim would have accrued commencing November **14,** 1946. The claim was not filed until September **22, 1949,** and, therefore, the claim was barred by the two year limitation established in the Court of Claims Law.

For this reason the claim will be denied.

(No.. 4272—Claimant awarded $581.71.)

CHARLES A. SMALLEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed **January 9, 1951.**

McCONNELL, KENNEDY AND McCONNELL, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where* **award** *will* **be made under.** Where claimant, while in the course of his employment as a highway section man in the Division of Highways of the Department of Public Works and Buildings, suffered a knee injury when an angle iron extending from a scale he was using to weigh crushed rock with caught **his** knee and wrenched it, Court held he was entitled to an award under Section 8 (e) of the Act for 15 per cent loss of use of his right leg.

LANSDEN, **J.**

Claimant, Charles A. Smalley, seeks to recover from respondent under the Workmen's Compensation Act for an injury, which resulted from an accident that arose out of and in the course of his employment as a highway section man in the Division of Highways of the Department of Public Works and Buildings.

On August 17, 1949, claimant was one of a group assigned to prepare black-top mix at the Division of Highways storage lot in Chillicothe, Illinois. This was done by mixing weighed amounts ***of*** crushed **rock** in **a**

mechanical mixer. Claimant, who was weighing a wheelbarrowful of crushed rock on scales to which was attached a steel angle iron extending down each side of the scale, squatted down to read the balance arm of the scale. As he raised up, his left knee caught under the angle iron, and was severely wrenched.

Claimant continued to work until August 22, **1949,** when the injury to his knee, which was painful, prevented him from straightening his knee. He reported to his superiors, and was sent to a specialist in orthopedics, who advised an operation on the knee.

Claimant continued to work until September 6, 1949, when he was admitted to the hospital, and the following day a torn semilunar cartilage was removed from his knee. He remained in the hospital for twelve days, and then returned to his home with a cast on his leg. He returned to work even while the cast was on his leg, and was totally and temporarily disabled for only a period of two weeks.

No jurisdictional questions have been raised, and the record shows compliance with all jurisdictional prerequisites on the part of claimant.

At the time of the hearing claimant's knee was still painful, and somewhat weak. There was some limitation of motion both in extension and-flexion. His knee disclosed some crepitus and minor irritation in the joint, but there was no change in the bone pathology of the knee.

Claimant's physician and respondent's doctor both agree that there is some partial loss of use of claimant's left leg, and from the evidence, and the examination made by Commissioner Wise, we conclude that claimant has sustained **a** 15 per cent loss of use of his left leg.

On the date of his accident, claimant was **46** years of age, married, but had no children. Although he had worked for respondent less than a year, his salary had never been less than $203.00 per month, and under Section 10 of the Workmen's Compensation Act his earnings would have been sufficient to entitle claimant to the maximum rate of compensation, or $22.50 per week.

As stated above, claimant was totally and permanently disabled for a period of two weeks. He was paid his full salary during such time, or the sum of **$104.54,** when he should have been paid only **$45.00.** He was thus overpaid the sum of **$59.54.**

Respondent has furnished and paid for all medical and hospital bills, required to cure or relieve claimant from the effects of his injury, except Ace bandages required to be purchased by claimant costing $7.50.

Mary **I.** Reynolds, Peoria, Illinois, was employed to take and transcribe the testimony at the hearing before Commissioner Wise. Her charges amounting to **$53.50** are reasonable and customary, and an award is entered in her favor for such amount.

An award is entered in favor of claimant, Charles A. Smalley, under Section 8 (e) of the Workmen's Compensation Act for a 15 per cent loss of use of his left leg, or 28½ weeks at the rate of $22.50 per week, or the sum of $641.25, from-which should be deducted the overpayment above referred to in the sum of $59.54, making a net award of $581.71, all of which has accrued and is payable forthwith.

An award is also entered in favor of claimant in the sum of $7.50 for Ace bandages under Section 8 (a) of the Workmen's Compensation Act.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 4295—Claimant awarded $2,414.92.)

LOUIS LEE SMITH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 9, 1951.

R. WALLACE KARRAKER, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

CIVIL SERVICE EMPLOYEE RESTORED TO *POSITION—where entitled to recovery* for *wages during period of illegal discharge.* Where a civil service employee at the State Hospital at Anna, Illinois, was illegally discharged, and subsequently restored to his position by a Court of competent jurisdiction, he is entitled *to* the salary as provided for said position, for the period of the illegal discharge, where he is ready, able and willing to perform the duties of such position, and tendered his services to his employer.

SAME—*a suspended civil service employee is not entitled to wages during the period he was suspended.* Under the previous decisions of this Court, a claimant is not entitled to his salary during the period he was suspended.

DELANEY, J.

The claimant, Louis Lee Smith, an employee certified to the Department of Public Welfare by the Illinois Civil Service Commission, was assigned to the State Hospital at Anna, Illinois, as an attendant. On October 20, 1948, he was suspended for a period of 30 days until November 20, 1948 on alleged charges of being abusive to a patient by the name of Milo Garavaglia. Later on November 20, 1948, he was discharged. Claimant requested a hearing before the Civil Service Commission, and on July 25, 1949 he was discharged from his position in the Department of Welfare on the order of the Commission. On August 8, 1949, claimant filed his petition for review of the decision of the Civil Service Commission under the provisions of the Administrative Review Act of the State of Illinois in the Circuit Court of Union County, Illinois. On January 14, 1950, the Circuit Court of Union County declared the decision of the Civil Service Commission void, due to the fact that the

Civil Service Commission had lost jurisdiction of the cause as a hearing was not granted within sixty days after a request was made as required. Claimant was reinstated to his former position on March **20, 1950** at the same salary he received at the time of suspension, **$175.00** per month. The Department of Public Welfare, however, paid claimant regular salary from January **14, 1950,** the date of the order of the Circuit Court of Union County.

From the record, the only deduction that can be made is that claimant had been diligent in the protection of his rights, and at all times, for which he seeks payment of salary, he was ready, willing and able to perform the duties of his position, tendered performance thereof, and such tender was refused. These facts have to be taken as true as no affirmative defenses were offered to the contrary.

The record consists of the complaint, departmental report, transcript of evidence, claimant's brief, statement, brief and argument of respondent, and reply brief of claimant.

Where a civil service employee is illegally discharged and subsequently restored to his position by a Court of competent jurisdiction, he is entitled to the salary as provided for said position for the period of the illegal discharge where he is ready, able and willing to perform the duties of such position, and tendered his services to his employer.

Clay *Wilson* **vs.** *State of Illinois,* 12 **C.C.R.** *413;*
Herman Drezner vs. State of Illinois, 15 **C.C.R.** *16;*
Roy S. *Vancil vs. State* of *Illinois,* **Court** *of Claims* **No. 4224.**

The Court, therefore, finds that claimant is entitled to the payment of his salary from November **20, 1948** to January **14, 1950,** a period of **13** months and **24** days at the rate of $175.00 a month, or a total of **$2,414.92.** Under

the previous decisions of this Court, claimant is not entitled to his salary during the period he was suspended from October 20, 1948 to November 20, 1948.

An award is, therefore, entered in favor of the claimant, Louis Lee Smith, in the sum of $2,414.92.

(No. 4325—Claimant awarded $239.67.)

BYRON E. JONES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion *filed January* 9, 1951.

ROBERT W. MCCARTHY, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S *COMPENSATION* ACT—*where award* will *be made under.* Where a cook **for** the State of Illinois, Department of Public Welfare, was injured while cleaning a brush on an electric flour sifter, and the accident occurred in the course of his employment, Court held he **was** entitled to an award under the Act.

DELANEY, J.

Claimant, Byron E. Jones, filed his complaint for compensation under the Workmen's Compensation Act **for** an injury to the third finger of his right hand sustained while employed by respondent in the Department of Public Welfare at the Lincoln State School and Colony in Lincoln, Illinois.

On April 18, 1950, claimant was a pastry cook in the institution bakery; and, while cleaning a brush on the electric flour sifter, someone accidentally pressed the button which starts the machine. The force of the moving brush pushed his right hand against the metal edge of the clean out opening.

A medical examination was made by Dr. William W. Fox and the following was found :

1. Flexion contracture 45" at distal interphalangeal joint right ring finger with inability either to extend or flex distal phalanx. Full motion present at proximal interphalangeal joint and at metacarpophalangeal joint.
2. Scars (2) 1 inch long on lateral surface" and one 1½ inches long extending from lateral surface of right ring finger at distal interphalangeal joint to and around finger to lateral surface on palmar aspect of finger.

The record consists of the complaint, departmental report, transcript of evidence, and stipulation waiving briefs of both parties.

There is 'no question of jurisdiction raised in the record, and we find from the evidence that claimant was injured out of and during the course of his employment.

At the time of the injury, claimant was married, and had five children under eighteen years of age dependent upon him for support. He earned a total of $1,633.00 for the year immediately preceding his injury. His compensation rate, therefore, would be $20.00 per week. However, as the injury was incurred after July 1, 1949, this must be increased 50 per cent, making his compensation rate $30.00 per week.

From the record and the examination of the commissioner, claimant has suffered the entire loss of use of the distal phalanx of the third finger on his right hand.

We are of the opinion claimant is entitled to an award for 33⅓ per cent loss of use of the third finger of the right hand. Under Section 8, Paragraph (e-4) and Paragraph (j) as increased by Paragraph (n), this would be 8⅓ weeks at $30.00 per week or $250.00. The claimant was temporarily totally disabled for a period of eight days, or one and one-seventh weeks. Respondent paid him full salary which amounted to $44.62. The sum of $10.33 must be deducted from the award for non-productive time.

An award is, therefore, made in favor of the claimant, Byron E. Jones, in the sum of $250.00, less the sum of **$10.33** paid for non-productive time, or the sum of **$239.67,** all of which has accrued and is payable forthwith.

Mary Kelly, Court Reporter, was employed to take and transcribe the testimony, for which she made a charge of $16.45. We find that this charge is fair, reasonable and customary.

An award is, therefore, entered in favor of Mary Kelly in the sum of $16.45.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4331—Claimant awarded $4,857.62.)

ERNEST ASPHALT SALES COMPANY, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed January 9, 1951.

MCLAUGHLIN LAW OFFICES, Attorneys for Claimant.

IVAN A. *ELLIOTT,* Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

MATERIALS AND SUPPLIES—*claimant's clerical error will not preclude payment, if bill is rendered within a reasonable time.* Where claimant contracted to supply the State of Illinois with asphalt filler material; and, through its own clerical error, submitted a bill which was below the price agreed to by the State and claimant, it was held that claimant was entitled to an award.

DELANEY, J.

Claimant, Ernest Asphalt Sales Company, a corporation, had two similar contracts with the Department of Public Works and Buildings, Division of Highways, to furnish given quantities of asphalt filler materials. The price set out in the first contract a year earlier was

less than the price set out in the second contract. In submitting its billing under the second contract, 'claimant's personnel inadvertently used the price set out in the first contract. The claimant now seeks to'be reimbursed for this clerical error.

A stipulation was entered into by the parties that the report of the Division of Highways, dated October 18, 1950, signed by Earl McK. Guy, Engineer of Claims, which has been filed in this cause under Rule 16 of the Court of Claims, shall constitute the record in this case. It is solely a stipulation of facts:

The Division of Highways issued a requisition for the purchase of 4,100 tons of crack filler asphalt (PAF-2), and 525 tons of joint filler asphalt (PAF-3) for delivery at specified points. Pursuant to this requisition, the Department of Finance issued a purchase order, dated November 14, 1947. The parties agreed on a price of $38.40 per ton on both types of asphalt. This contract was completed. On a later date the Division of Highways issued another requisition for the purchase of 2,500 tons of crack filler asphalt (PAF-2) to be delivered at specified points. Pursuant to this second requisition, the Department of Finance issued another purchase order dated December 29, 1948. The parties agreed on a price of $41.00 per ton for 2,500 tons of (PAP-2) crack filler.

Under this second purchase order, the claimant furnished 2,609.95 tons of (PAF-2) asphalt crack filler instead of 2,500 tons as set out in the requisition and purchase order. The excess of 109.95 tons was shipped at the suggestion of the Division of Highways. The billing by claimant for the 2,609.95 tons was on the basis of $38.40 a ton plus freight. Claimant was paid $102,150.33. A billing for the same quantity at the rate of $41.00 per

ton is $107,007.95. The difference between the foregoing two amounts is $4,857.62.

The appropriations, from which the amount due under the second contract was payable, lapsed as of September 30, **1949.** Claimant furnished corrected invoices, but not prior to September **30,** 1949, and they could not be paid in the regular course of business. Funds were available in the then existing appropriations for payment of the invoices had they been presented within the prescribed time.

Claimant furnished properly and duly authorized materials to the respondent, for which it has not received adequate payment, even though the nonpayment was caused by the clerical error of the claimant's personnel. This Court has repeatedly held that where materials or supplies have been properly furnished to the State, and a bill therefor has been submitted within a reasonable time, but the same was not approved and vouchered for payment before the lapse of the appropriation from which it is payable, an award for the reasonable value of the supplies will be made, where, at the time the expenses were incurred, there were sufficient funds remaining unexpended in the appropriation to pay for the same. *Carl S. Johnson* v. *State,* 16 C.C.R. 96; *Rock Island Sand and Gravel Co.* v. *State,* 8 **C.C.R.165;** *Oak Park Hospital* v. *State,* **11** C.C.R. 219; *Yourtee-Roberts Sand* Co. v. *State,* 14 **C.C.R.124.**

The Court feels that the claimant comes within the findings in the above cited causes.

An award is, therefore, entered in favor of claimant for the sum of $4,857.62.

(No. 3975—Modification of Prior Award.)

MERNA MAE ARCHER, WIDOW, ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 9, 1951.

NOBEL G. JOHNSON, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

MODIFICATION OF PRIOR AWARD—Where a mother and her minor child had previously been granted an award under the name of Archer, and at this date there is still money owing to the minor, and, since the date of the prior award, said mother has remarried, the Court has the power, and did modify the prior award to read payable to the mother as next friend and guardian of said child in her new married name of Sauer.

Merna Mae Archer, widow, and Judith Mae Archer, minor child of Marvin C. Archer, mere granted an award in Case No. **3975,** 16 C.C.R. **93.**

Merna Mae Archer remarried on September 30, **1950,** and her name is nom Merna Mae Sauer. The minor child of the parties is still living, and the balance of said award is due and owing her.

The award heretofore entered in this cause on November **14,** 1946 is hereby modified to the effect that the unpaid balance of $1,308.00 is payable as follows to Merna Mae Sauer, mother, next friend and natural guardian of Judith Mae Sauer, formerly Judith Mae Archer, minor :

The sum of $306.00 to February 6, 1951, which is due and payable forthwith;

The balance of $1,002.00 is payable to Merna Mae Sauer, mother, next friend and natural guardian of Judith Mae Sauer, formerly Judith Mae Archer, minor, in meekly installments of $18.00 each, commencing on February **13,** 1951 for a period of 55 weeks with one final payment of $12.00.

(No. 4219—Claimant awarded $1,852.50.)

ROY H. WATSON, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 9, 1951.

W. W. DAMRON, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where an employee of the Department of Public Works and Buildings of the State of Illinois injured his back, and sustained 50 per cent permanent specific loss of the use of his left leg while rolling drums of asphalt in the course of his employment for the State, it was held that claimant was entitled to an award.

SCHUMAN, C. J.

Claimant, Roy H. Watson, while employed in the Department of Public Works and Buildings, Division of Highways of the State of Illinois, was injured on September 21, 1948.

No jurisdictional questions are raised and claimant's earnings for the year preceding his injury were $2,160.00. He is married, but has no children under 16 years of age.

Claimant, with two other employees, was rolling a 55 gallon drum of asphalt up a plank, which was extended from a truck to the ground, and, while so doing, felt a sharp pain in his back at the belt line. He had already helped load three or four similar drums onto the truck.

The pain was persistent, and he did not return to work the following day, but did go to see a chiropractor by the name of Dr. McKee. He was in such misery that he had his wife call an ambulance, and he was taken to Dr. Beverly Moore at Benton, where he was examined and hospitalized.

Dr. Moore did not testify, but a report of the Division of Highways contains a report, dated September

27, 1948, from the doctor. This report indicates that the X-Rays showed no bone pathology and "*the intervertebral spaces are well preserved.*" His conclusion, as shown by the report, **was** as follows, "This man had **a** lumbosacral strain with some discomfort referred down into the leg. Early treatment is conservative."

A report, dated October 23, 1948, showed that pain in the back had disappeared, but that he did complain of a little discomfort in the region of the great trochanter and the head of the fibula in the region of the outer side of the knee when he put weight on the left leg.

A report, dated December **1,** 1948, showed that an examination on November 29, 1948 indicated the leg as definitely improved; that he had no active pain below the knee; that he did have a little soreness in the outer upper portion of the left leg, and that he stooped well.

A report, dated January **14,** 1949, was for an examination had on December 13, 1948. Claimant had hauled some manure, and lifted a garage door on the track, which he thought made his back worse. The pain in the leg was not made worse by this experience.

Dr. Moore advised him to return to work on December 15, 1948, and, if he could not continue, he was to report back.

Claimant returned to work for two days, but could not continue. On February **4,** 1949, he was sent to Dr. Fred Reynolds, orthopedic surgeon, in St. Louis, Missouri. Claimant stated no X-Rays were taken, and the doctor examined him mostly by questioning him about his misery, and where it was, and how it affected him.

From the report of the Division of Highways, a report from Dr. Reynolds, dated February 12, 1949, shows that claimant was examined, and his feeling was that claimant had received **a** ruptured interverebral disc,

probably at the lumbosacral junction on the left side. He recommended a belt, and anticipated that claimant would recover without the necessity of surgery, and felt he could do light work.

Claimant returned to work on February 7, 1949, and worked until March 3, 1949, when he was let out.

Dr. Reynolds again saw claimant on May 25, **1949,** and his examination showed claimant to have tenderness at the lumbosacral junction, and over the siatic distribution in the leg. There was liniitation and extension in the spine, and pain on extension. Otherwise, the examination was essentially negative. The doctor stated that the man had **a** ruptured intervertrebral disc, that claimant did not want surgery, and that he felt that a settlement of 20 per cent total disability should be made.

Claimant testified that he had done farming before he went to work for the State Highway Division. The report showed he had been working on the highway since August 12, 1947; that since leaving the Division of Highways he had been farming; that while on the highway, he rented one-half of his 60 acre farm for wheat; that since he left the higliway, he had cultivated 20 acres on his farm; that he has not worked for anyone else but himself, and prior to his injury he had no trouble with his back; and that the last time he saw a doctor was on May 25, 1949, and is not now under the care of a doctor.

Dr. S. H. Frazer made no physical examination of the claimant, but based his opinions on the testimony he heard, and the report of Dr. Reynolds. The principal part of his testimony was to the effect that an operation would not be recommended for a man 60 years of age.

After the original hearing the Court denied an award, and granted a rehearing for additional testi-

mony. Dr. Frazer stated claimant's left foot showed diminished sensation, and possible future paralysis of the left leg after a re-examination on October 14, 1950.

Claimant, Roy H. Watson, at the hearing of November 27, 1950, testified that the pain in his left leg was gradually getting worse.

The Court concludes that claimant has sustained a permanent specific loss of 50 per cent of the use of the left leg, and, on the basis of this record, we make the following award:

Fifty per cent permanent partial specific loss of the use of the left leg in the sum of $1,852.50, all of which has accrued and is payable forthwith.

The claim of Zola Young Sloan for stenographic services in the amount of $69.78 is found reasonable, and an award in the amount of $69.78 is hereby allowed.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

All future payments are subject to the terms and provisions of the Workmen's Compensation Act of the State of Illinois.

Jurisdiction of this cause is specifically retained for the entries of such further orders as may from time to time be necessary.

(No. 4253—Claimant awarded $375.00.)

JAMES M. CARTER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 9, 1951.

CHALMER C. TAYLOR AND WHEDON SLATER, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

NEGLIGENCE—*State is liable for malpractice of a veterinarian employed by respondent to test claimant's herd of cattle for "Bang's Disease", when said veterinarian hurried through the test and failed to take the proper sanitary precautions, thereby proximately causing the death of one of the head of cattle.* Where veterinarians, employed by the State, acting under orders from the Department of Agriculture (pursuant to the authority of Ill. Rev. Stat. 1949, Chap. 8, Secs. 134-148a), hurriedly and without proper sanitary precautions tested claimant's herd of cattle, and said acts caused one head of the cattle to die, claimant was entitled to an award under Sec. 8 (C) of the Court of Claims Act.

LANSDEN, J.

Claimant, James M. Carter, seeks to recover for the malpractice of a veterinarian employed by respondent to test claimant's herd of cattle for bovine infectious abortion commonly known as "Bovine Brucellosis" or "Bang's Disease."

The Federal and State Governments cooperate to control and eradicate Bang's Disease, acting through their respective Departments of Agriculture. In Illinois, this program was started as the result of legislation in 1939, later extensively amended in both 1945 and 1949. Ill. Rev. Stat. 1949, Chap. 8, Secs. 134-148a.

Accredited veterinarians are employed and paid by respondent to administer the tests for Bang's Disease to herds of cattle, the owners of which apply therefor to either Department of Agriculture.

Claimant had, prior to 1949, applied for such tests, and, at the time of the occurrence out of which this action arose, his herd was subject to annual testing. Such tests were to be made at claimant's farm near Hudson, McLean County, Illinois.

The test for Bang's Disease consists of the insertion of a blood needle into the jugular vein of a cow, withdrawing a blood sample, placing such sample in a sterile tube, and then sending the tube to a licensed laboratory, where the approved. "agglutination test" is completed.

On March 1, 1949, claimant's herd was tested by Dr. G. J. Kruger, one of respondent's veterinarians, and found, after laboratory analysis of blood samples, to be free of Bang's Disease.

However, on April 28, 1949, an assistant to another of respondent's veterinarians, Dr. C. M. Ruck, came to claimant's farm, and informed him that Dr. Ruck would test his herd the next day for both tuberculosis and Bang's Disease. Claimant was requested to have his cattle in his barn when Dr. Ruck arrived.

When Dr. Ruck and his assistant arrived at claimant's farm the next morning, they went directly to the barn, and started the tests in the absence of claimant, who was in his fields working. By the time claimant got to the barn most of the cattle had been tested, and, although claimant informed Dr. Ruck of the recent tests by Dr. Kruger, Dr. Ruck tested the entire herd.

One of the cows tested by Dr. Ruck, subsequent to the arrival of claimant on the scene, was a 3 year old grade Brown Swiss named "Elsie."

Cattle tested for Bang's Disease are required to have ear tags. Although there is some dispute in the record as to what number was on Elsie's ear tag, claimant was positive that she was tested on both dates, and that she mas tested by Dr. Ruck after claimant arrived at the barn.

Although two tests for Bang's Disease within sixty days do not endanger or hurt cattle, when Dr. Ruck learned of the previous' test, he apparently hurried through the testing of the other cattle, one of which was Elsie.

Within a day or so, Elsie developed a severe swelling on her neck extending from her mouth to her brisket. The center of this swelling mas the point at which Dr.

Ruck inserted the blood needle. On May 2, 1949, Elsie died.

Dr. Kruger, who had been called by claimant to treat Elsie, arrived shortly after her death. He testified at the hearing before Commissioner Wise, without objection, that her death was due to a malignant edema, which resulted from the insertion of the blood needle without the taking of the proper sanitary precautions by Dr. Ruck.

The foregoing facts make out a case of negligence for which respondent is liable under Section 8(c) of the Court of Claims Act.

The evidence as to the value of Elsie is undisputed, and shows that she was worth **$375.00.**

An award is, therefore, entered in favor of claimant, James M. Carter, for the sum of $375.00.

(No. 4278—Claimant awarded $35.00.)

CHARLES W. CONRAD, BEN BENTIWG AND DONALD GARNER, Claimants, ***vs.*** **STATE** OF ILLINOIS, Respondent.

Opinion filed February 9, 1951.

I. **RAY** CARTER, Attorney for Claimants.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

RULES OF THE COURT—*claims* must be presented by licensed attorneys. Where two of three claimants did not either present their claims personally or have a licensed attorney represent them, the Court acting under Rule **4** (b) of the Rules of the Court, dismissed their claims, but without prejudice.

INDEMNIFICATION TO OWNERS OF SLAUGHTERED CATTLE—*State is* liable *to* cattle owner when cattle is **slaughtered because *of* a positive reaction *to* a T. *B*. Test.** Where claimant, finding one of his cattle reacted to a T. B. Test in a positive manner, had said head of cattle destroyed, he was entitled to an award pursuant to the authority of Ill. Rev. Stat. 1947, Chap. 8, Sec. **92.**

INDEMNIFICATION TO OWNERS OF SLAUGHTERED CATTLE—*State is not* liable to a cattle owner when he ships cattle to be slaughtered because *of* a positive reaction to the Bang's Disease Test. Where claimant's cattle was

tested by a veterinarian of the State of Illinois, and, by mistake, he gives claimant a T. B. reactor slaughter form, and the latter relying on the finding ships out said cattle to be destroyed, claimant is not entitled to an award because of the mistake of the veterinarian, because when claimant filled out said form, he consents to having his cattle destroyed and thereby compounds the wrong of the State veterinarian.

LANSDEN, J

This case was commenced by the filing of a complaint, prepared and signed only by claimant, Charles W. Conrad, who is not a licensed attorney. He sought to make claimants, Ben Benting and Donald Garner, parties to this action, although the complaint states that Garner did not want to join as a party.

At the time of the hearing, claimant, Conrad, was represented by a licensed attorney, but no counsel appeared for claimants, Benting and Garner.

Rule 4 (b) of the Rules of this Court reads in part as follows:

"Only a licensed attorney and an attorney of record in said case will be permitted to appear for or on behalf of a claimant, but a claimant, although not a licensed attorney, may prosecute his own claim in person. . . ."

Therefore, claimants, Benting and Garner, have no standing in this Court, and their claims must be dismissed, but without prejudice.

In this State, the Federal and State governments cooperate to control and eradicate both bovine tuberculosis and bovine infectious abortion, the latter being commonly known as "Bovine Brucellosis" or "Bang's Disease." Ill. Rev. Stat. 1949, Chap. 8, Sees. 87-105, 134-148a. The T. B. test is compulsory, but the Bang's Disease test is voluntary. The expense of both tests, if made by a veterinarian employed by respondent, is borne by respondent.

Conrad was the owner of the two farms in Vermilion County upon which Benting and Garner were tenants.

Cattle on these farms were owned fifty-fifty by Conrad and the respective tenants.

On May 3, 1949, Dr. D. H. Ward, a licensed, accredited veterinarian, employed by respondent, tested the 23 cattle on the Garner farm, and the 8 cattle on the Benting farm for both T. B. and Bang's Disease. A few days later, Dr. Ward informed Garner that his herd contained no T. B. reactors, but did have one Bang's Disease reactor. Dr. Ward then informed Benting that his herd contained no T. B. reactors, but did have two Bang's Disease reactors. Conrad learned this information shortly thereafter, and was furnished copies of the reports of both tests.

Then, a day or so later, Dr. Ward delivered to Conrad a form entitled, "Notice of Shipment of T. B. Reactors for Slaughter." The notice stated that reactors must be slaughtered within fifteen days after reaction to the test, or no State and Federal indemnity mould be paid. The notice contained some spaces for the shipper of cattle to fill in, and was required to be mailed to the State Division of Livestock Industry at the stockyards to which the cattle were shipped.

Conrad arranged to ship the three cattle that had reacted to the Bang's Disease test to a commission house at the Union Stockyards, Chicago, Illinois. On the notice covering the one Garner cow, Conrad signed at the bottom a statement of the cow's value. He made no notation on the other notice covering the two Benting cows, but his and Benting's names appeared on the notice as owners.

Both a State and Federal indemnity are paid in the event T. B. reactors are slaughtered. Ill Rev. Stat. 1947, Chap. 8, Sec. 92; 21 U.S.C.A. Sec. 114a, but no indemnity has been paid for the slaughter of Bang's Disease re-

actors since July 15, **1946,** the State and Federal governments not having eo-operated in this regard. Ill. Rev. Stat. **1945,** Chap. 8, Seo. 137.

Since the three cattle were finally sold as T. B. reactors, the selling price was, claims Conrad, less than their value, and he now maintains that Dr. Ward ordered him to sell the cattle, and that respondent should pay him for the loss sustained, because Dr. Ward furnished him with a T. B. reactor slaughter form when the cattle were not T. B. reactors but w'ere Bang's Disease reactors.

Aside from the fact that Conrad knew the cattle were not **T.** B. reactors before the notice was furnished to him by Dr. .Ward, and further that Conrad conceded that he did not-examine the notice carefully or completely, there is a fundamental weakness in the position he takes. Before either T. B. or Bang's Disease reactors can be destroyed, the owner must consent thereto. Ill. Rev. Stat. **1947,** Chap. 8, Sees. 92, 136. By shipping the cattle, and filling out and mailing the notice, Conrad evidenced his consent to their destruction. The confusion which started when Dr. Ward furnished the wrong notice was compounded when Conrad consented, and his loss is attributable as much to his actions as to those of Dr. Ward.

However, after slaughter and upon inspection, it was found that one of the Benting cows did have T. B., **al**though she had not reacted to the T. B. test. For this cow, which was shipped and sold as a T. B. reactor, claimant is entitled to an indemnity, although no appraisal of her value was made before she left the farm:

The evidence shows that the cow, a pure-bred milking Shorthorn, was worth $450.00. She brought for slaughter $180.32, the difference being $269.68. Respondent is liable for one-third of the difference, or $70.00,

whichever is less. Ill. Rev. Stat. **1947,** Chap. 8, Sec. **92.** But, Conrad is entitled to only one-half of the sum of $70.00, or $35.00, since he owned only a one-half interest in the cow.

An award is, therefore, entered in favor of claimant, Charles W. Conrad, in the sum of $35.00.

Claims of claimants, Ben Benting and Donald Garner, are dismissed without prejudice.

(No. 4306—Claimants awarded *$5,500.00.)*

CARL P. ROMMEL, ILEENE ROMMEL, AND JANET STOUT, A MINOR BY HER FATHER AND NEXT FRIEND, JAMES J. STOUT, Claimants, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed February 9, 1951.

WINSTON, STRAWN, SHAW **AND** BLACK, Attorneys for Claimants.

IVAN **A.** ELLIOTT, Attorney General; **WILLIAM** H. SUMPTER, Assistant Attorney General, for Respondent.

NEGLIGENCE—*what constitutes negligence* on ***the*** *part of the* ***State.*** Where the State had a road under construction, and at night failed to illuminate barricades it had put up to warn traffic, and also failed to illuminate a sign it had put up to warn traffic about five hundred and fifty feet from said barricades, when linked together constituted negligence on the part of the State. And, therefore, since the claimants were not guilty of contributory negligence, they were entitled to an award under Sec. 8 (C) of the Court of Claims Act.

Minor of ***two*** *and one-half years cannot be guilty of contributory negligence.* The defense of contributory negligence is not available to a minor of two and one-half years of age.

LANSDEN, J.

Claimants, Carl P. Rommel and Ileene K. Rommel, his wife, and their granddaughter, Janet Stout, by her father and nest friend, James J. Stout, seek to recover from respondent for its negligence in failing to light and warn of the presence of barricades, located in the center

of one of the public highways, maintained and controlled by respondent.

The Departmental Report on file herein reads in part as follows:

"Marked U. S. Highway Routes 12 and 20 include that part of 95th Street in Cook County, Illinois, between marked U. S. Route 45 on the west and marked Illinois Route 7 (Southwest Highway) on the east. Having the status of a marked U. S. highway, that section of 95th Street is a part of the System of State Highways, and is subject to operation, maintenance, and reconstruction by the State of Illinois.

"Between U. S. Route 45 and State Route 7, 95th Street has a concrete pavement width of 40 feet, divided into four traffic lanes of 10 feet each. There are two lanes for east bound traffic and two lanes for west bound traffic.

"During the week of October 23 to 29, 1949 a maintenance force of the Division of Highways was engaged in patching the pavement on 95th Street between Kean Avenue and Southwest Highway. All patching was done in the inner lanes, thus leaving the outside lanes for east and west bound traffic open to unrestricted travel at all times.

"Patching consisted of removing an area of damaged or deteriorated pavement and replacing it with new concrete. A rectangular section between the center line of the pavement and the division line between the inner and outer traffic lanes was removed down to the earth subgrade. After the new concrete was poured it was permitted to cure for a period of four days before exposure to unrestricted traffic use.

"The most westerly of the patches made between Kean Avenue and Southwest Highway was completed on Thursday, October 27, 1949. This patch is in the inner of the two lanes for east bound traffic. Immediately after the patch was completed standard barricades were set up on the east and west sides of the patch. . . ."

October 30, 1949, was a cloudy day. A few minutes before 5:00 P.M., and just after sunset on that day, Mr. Rommel and his wife, together with their granddaughter, aged two and one-half, left their home in LaGrange, Illinois, in Mr. Rommel's car to drive to the home of their granddaughter's parents.

The car, a 1949 Mercury sedan, with only about 5,000 miles on it, was in good mechanical condition, having recently been checked.

Their route took them along 95th Street in an easterly direction. The car lights were burning in the dimmed

position, and Rommel drove along 95th Street at 40-50 miles per hour in the inside of the two right lanes. The terrain was hilly but gently rolling. All three sat in the front seat, but did not engage in conversation, and the granddaughter, sitting between her grandfather and grandmother, was quiet. The car windshield was clean; it was dark and the pavement was dry.

Rommel was familiar with 95th Street, but the last time he had travelled over it no patching was going on, and he did not know that barricades were placed in the two center lanes of the four-lane highway.

At about 5:15 P.M. Rommel's car crested a rise in the highway on 95th Street, and about 70 feet beyond the crest his lights suddenly illuminated. an unlighted barricade about 40-50 feet in front and in the lane of his car. He swerved to the right to avoid the barricade, but lost control of his car. It plunged across' the road shoulder and down into a ravine, and crashed against a tree, which stopped and heavily damaged the car, and caused severe injuries to Mrs. Rommel, and minor injuries to Janet Stout.

Two disinterested witnesses, one an eye witness and the other a police officer, who was called to investigate the accident, testified for claimants. Their testimony showed that an employee of respondent was engaged in lighting the flares at the various barricades moving from east to west. Such employee did not light the flares at the barricade Mr. Rommel was involved with until two other cars almost crashed into it, and the most westerly flare set up by such employee on the highway was in the same lane but on the west side of the crest of the rise, since the flares lighting the barricade were not visible until the crest was reached. Their testimony also showed that there was no flare illuminating a sign along

on the highway shoulder 550 feet west of the crest of the hill, which was black and yellow and bore the legend "Road Repairs Ahead."

It is our opinion that respondent was guilty of negligence. *Pomprowitz* v. *State,* 16 **C.C.R.** 230. In fact, respondent impliedly so concedes, since its sole defense asserted in its brief is that Mr. Rommel was guilty of contributory negligence. Such defense is, of course, not available against the claim of the two and one-half year old granddaughter, but as to her claim respondent maintains the $500.00 damages sought are excessive. No defense is asserted against Mrs. Rommel's claim.

Respondent relies on the familiar rule that one cannot be heard to say that he did not see, when, if he had looked, he would have seen. *Greenwald* v. *B. & O. R. R.,* 332 Ill. 627. The application of this rule cannot be made in this case, as is manifest from the foregoing statement of facts. The more recent pronouncements of the Courts in this State lead us to the conclusion that Rommel **was** not contributorily negligent as a matter of law or in fact. *Rees* v. *Spillane,* 341 Ill. App. 647; *Williams* v. *Walsh,* 341 Ill. App. 543, 95 N. E. 2d **743.** Of course, even if Mr. Rommel had been guilty of contributory negligence, such negligence was not imputable to Mrs. Rommel. *Monken* v. *B. & O. R.* Co., 342 Ill. App. **1.**

All claimants are, therefore, entitled to awards,

As to the damages, Section 8 C of the Court of Claims Act limits recovery to $2,500.00 for each claimant.

Carl P. Rommel is clearly entitled to $2,500.00 since his car was damaged to the extent of $1,000.00, and he expended over $3,000.00 for hospital, doctor and nursing bills for Mrs. Rommel. He makes no claim for personal injuries.

Ileene K. (Mrs.) Rommel is also entitled to $2,500.00. She sustained fractures of both legs and one hand, severe bruises about her head and mouth. She was hospitalized for two and one-half months, and was confined to her bed at home until March 26,1950. She used a walker for some time, and still walks with a cane, and is unable to perform her household duties. The flexion of her left knee is permanently impaired and X-Rays disclosed definite indications of traumatic arthritis in such knee. That Mrs. Rommel suffered great pain for some time is beyond question.

James J. Stout, the father of Janet Stout, testified at the hearing that he waived all claims that he might have to amounts expended for the treatment of his daughter's injuries so that she could recover such in her name. This has been held to be permissible. *McHugh* v. *Hirsch Clothing* Co., 308 Ill. App. 272.

That Janet Stout went through a terrifying experience can not be denied. A cut on her head required several stitches, and she was so frightened that she screamed for some time after the accident. She now becomes easily frightened by the noise of sirens or screeching brakes. Although her medical bills amounted to only $30.00, we feel that we would be remiss if we confined her recovery to nominal damages for a mental scar, the effect of which is definite and of uncertain duration. A recovery greater than the amount she seeks was approved in *Frank* v. *B. & O. S. R.* Co., 269 Ill. App. 129, for somewhat similar injuries. Janet Stout is, therefore, entitled to the damages claimed of $500.00.

An award is entered in favor of claimant, Carl P. Rommel, for $2,500.00.

An award is entered in favor of claimant, Ileene K. Rommel, for $2,500.00.

An award is entered in favor of Janet Stout, a minor, by James J. Stout her father and next friend, for $500.00.

(No. 4314—Claimant awarded $1,265.63.)

ROY JONES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion *filed February* 9, 1951.

ARNOLD AND ARNOLD, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where* award *will be made under.* Where claimant, an employee of the Department of Public Works and Buildings, Division of Highways, while driving a tractor was injured when said tractor slipped off the road, he was considered injured while in the course of his employment, and was entitled to an award under the **Act.**

DELANEY, J.

On January 3, 1950, the claimant, Roy Jones, was an employee of the respondent in the Department of Public Works and Buildings, Division of Highways. On that day he was one of a group of men assigned to move equipment from the Village of Brooklyn, Schuyler County, to a Day Labor garage at Camp Ellis, Ipava, Illinois. At approximately 9:30 A.M. Mr. Jones, at a storage lot in Brooklyn, was driving a Caterpillar tractor up a ramp onto a low-boy trailer for transporting to Ipava.

Immediately before loading operations, rain had fallen. The tractor treads and the ramp were muddy. As the tractor moved up the ramp, the tractor slipped off and tipped sideways, throwing Mr. Jones to the ground. He fell on his extended right arm, fracturing it at the wrist. Immediately after the accident, Mr. Jones notified the Division, and went to Dr. Joseph Zingher of Rushville, who reduced the fracture, and treated the injury to its conclusion.

On January 3, 1950, Dr. Zingher submitted the following report to the Division of Highways:

"Nature of Injury—Multiple fractures of distal end of right radius. Treatment—Drugs for pain, arm and forearm cast—X-Rays taken. Estimate of disability—Eight weeks total. Estimated date of ability to return to work—Eight weeks. What permanent disability do you expect?—Painful wrist is possible."

On March 13, 1950, Dr. Zingher submitted another report to the Division of Highways in which he returned claimant, Roy Jones, to light work:

"The X-Ray reveals that the ulnar styloid has not yet united and may never do so. This is not too great a functional loss, however."

"Nature of Injury—Multiple fractures of distal end of right ulnar styloid process. Treatment—Dmgs for pain, arm and forearm cast. X-Rays taken. Date patient able to work 3/13/50, patient to light work. Permanent disability—Possible painful right wrist with some limitation of motion."

The record consists of the complaint, departmental report, stipulation waiving briefs of both parties, transcript of evidence and X-Ray exhibits Nos. 1 and 2.

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the injury and claim for compensation were made within the time provided by the Act.

On the date of injury, claimant was employed as a truck driver at a wage of $1.75 an hour, and in the twelve preceding months had earned a total of $1,353.97. Other employees of the Division working in a capacity similar to Mr. Jones ordinarily worked less than 200 days a year. Therefore, claimant's claim will be computed under Section (10) of the Workmen's Compensation Act. For compensation purposes, claimant must receive the maximum compensation rate of $15.00 per week. Claimant was married, but had no children under eighteen years of age dependent upon him for support at the time of the accident. He was paid compensation for temporary

total disability at the compensation rate of $22.50 a week from January 4 to March 12, 1950, in the amount of $218.57. Compensation was terminated March 12, 1950, since Dr. Zingher in his letter and report of March 11, 1950 said Mr. Jones was able to return to work on March 13, 1950.

The Division has paid Dr. Zingher $146.50 for his treatment of Mr. Jones, which included charges for X-Rays and cast material.

In a great many cases the ulnar styloid does not unite in the type of injury we have under consideration. From the record, and the examination of the Commissioner of this Court, we are of the opinion that claimant has suffered a 25 per cent permanent partial loss of use of his right arm, and is entitled to an award for a period of 56¼ weeks at the compensation rate of $22.50 per week, or a total of $1,265.63.

An award is, therefore, entered in favor of claimant, Roy Jones, in the amount of $1,265.63 to be paid to him as follows:

$1,070.36 which has accrued, is payable forthwith;

$ 195.27 is payable in weekly installments of $22.50 per week, beginning on the 16th day of February, 1951 for a period of 8 weeks, with an additional final payment of $15.27.

The taking and transcribing of the testimony before Commissioner Summers mas performed by Mary Lou Paisley, who has submitted a bill for her services in the amount of $22.00. The Court finds these charges usual, fair and customary, and an award is, therefore, made in favor of Mary Lou Paisley in the amount of $22.00, payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4343—Claimant awarded $70.97.)

TED E. DAVIES, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 9, 1951.

FRANK B. DEYO, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL AND WILLIAM H. SUMPTER, Assistant Attorneys General, for Respondent.

EXPENSE ACCOUNTS—Where an employee of the Division of Waterways of the Department of Public Works and Buildings worked only twenty of thirtyone days in a month, his expense account will be reduced proportionately; but he is entitled to an award on that basis.

LANSDEN, J.

The facts in this case have been stipulated, and such stipulation is hereby approved.

Claimant, Ted E. Davies, was employed by respondent from September, 1946, until October 26, 1948, in the Division of Waterways of the Department of Public Works and Buildings. Claimant actually worked only through October 20, 1948, the remainder of his period of employment being used in annual leave.

During his period of employment claimant was paid a regular salary, and, in addition, while assigned to duty away from his official headquarters, he was entitled to reimbursement for actual expenses incurred, subject to a maximum limitation, and to the rules and regulations of the Department of Finance.

For the twenty-day period in October, 1948 that claimant actually worked, he was assigned to duty away from his official headquarters, working with a surveying party in the vicinity of LaGrange, Illinois.

Before the end of October, 1948, and while using up his annual leave, claimant submitted an expense account for $110.00 covering the entire month. He was promptly informed that such amount could not be paid since he

had actually worked only through October 20, 1948, and he was requested to revise his expense account downward to reflect this fact.

After considerable exchange of correspondence, claimant, who was none too prompt in acceding to requests therein, finally submitted a revised expense account, which was received by the Division of Waterways on December 1, 1949. He was then informed that the appropriation to pay such expenses had lapsed, and, therefore, payment could not be made.

From the stipulation, it is apparent that the Division of Waterways insisted that claimant's expense account of $110.00 for the entire month of October, 1948 be reduced proportionally to reflect the fact that he actually worked only twenty of the thirty-one days in the month of October, 1948. Claimant finally did this in substance, and he is, therefore, entitled to an award of twenty thirty-firsts of $110.00 or the sum of $70.97.

An award is entered in favor of claimant, Ted E. Davies, for $70.97.

(No. 4346—Claimant awarded $6,675.00.)

CORINNE W. ARNOLD, WIDOW, ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion ***filed February 9, 1951.***

OTTO M. HAMER AND JOHN P. DERNING, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where* ***award will be made under.*** Where the automobile, owned by the State of Illinois and driven by the Maintenance Engineer for District 10 (Cook County), of the Division of Highways, Department of Public Works and Buildings, on official departmental business, authorized by his superiors in Chicago, was struck by a

truck, and claimant sustained fatal injuries, Court held his widow was entitled to recover under the Act. Sections 7 (a) (f) (h) and (l) apply.

LANSDEN, J.

Claimant, Corinne W. Arnold, widow of Clarence C. W. Arnold, deceased, seeks to recover from respondent under the Workmen's Compensation Act for the death of her husband in an accident that arose out of and in the course of his employment as District Maintenance Engineer for District 10 (Cook County) in the Division of Highways of the Department of Public Works and Buildings.

The Departmental Report on file herein reads in part as follows:

"On September 12, 1950, Mr. Arnold drove to Springfield from his home in Mt. Prospect, Illinois, for conferences in the Bureau of Maintenance, Division of Highways. The trip was made at the instance of Mr. Arnold's superiors in Chicago and Springfield. The car driven by Mr. Arnold was regularly assigned to him and owned by the Department of Public Works and Buildings, Division of Highways.

"After completion of his work in Springfield, Mr. Arnold left that city at approximately 4:00 P.M., Central Standard Time, by way of Route U. S. 66. At approximately 8:00 P.M., Central Standard Time, Mr. Arnold was northeast bound on Route U. S. 66 in his proper traffic lane a short distance west of its intersection with State Bond Issue Route 53 in Will County. A tractor-semitrailer unit was southwest bound on Route U. S. 66. When passing through the intersection with Route 53, the tractor-semitrailer unit crossed the centerline of Route U. S. 66 into and along the lane for northeast bound traffic. At a point approximately 85 feet west of Route 53, the tractor-semitrailer unit and the car operated by Mr. Arnold collided head-on. Mr. Arnold was fatally injured and the car he operated was demolished. A passing motorist came upon the scene of the accident and notified the State Police. The State Police dispatched a squad car to the scene of the accident and placed a call for an ambulance. Mr. Arnold was taken to the St. Joseph's Hospital, Joliet, Illinois, where Dr. John Sadauskas, an interne, pronounced him dead. The hospital records described Mr. Arnold's injuries as, 'Skull fractures and crushing internal injuries. (As diagnosed by Coroner Willard G. Blood, Joliet, Ill.)''

In view of the foregoing and corroborating oral testimony, Clarence C. W. Arnold came to his death as a result of an accident that arose out of and in the course

of his employment, and his widow is entitled to an award under Section 7 of the Workmen's Compensation Act. *Foster* v. *State, 8* C.C.R. 340; *Connell* v. *State, 8* C.C.R. 452; *Miller* v. *State,* 16 C.C.R. 194; *Gill* v. *State,* opinion filed July 7, 1950; *Irwin-Neisler & Co.* v. *Ind. Com.,* 346 Ill. 89; *General Concrete Const. Co.* v. *Ind. Com.,* 375 Ill. 483.

On the date of his accident and death, decedent mas 43 years of age, married and living with his wife, and had one child; Barbara Corinne Arnold, born December 4, 1934, dependent upon him for support.

Decedent's earnings in the year prior to his death amounted to $6,541.87, and the rate of compensation in this case is $22.50 per meek.

Other than an ambulance bill, respondent has paid nothing in this case.

William J. Cleary & Co., Court Reporters, Chicago, Illinois, was employed to take and transcribe the testimony at the hearing before Commissioner Wise. Charges in the amount of $31.30 were incurred, which charges are reasonable and customary. An award is, therefore, entered in favor of William J. Cleary & Co. for **$31.30.**

An award is entered in favor of claimant, Corinne W. Arnold, widow of Clarence C. W. Arnold, deceased, under Section 7 (a) (f) (h) (L) of the Workmen's Compensation Act for the sum of $6,675.00, payable as follows:

$ 475.71, which has accrued and is payable forthwith,
$6,199.29, which is payable in weekly installments of $22.50 per week, commencing on February 16, 1951, for a period of 275 weeks, plus one final payment of $11.79.

Jurisdiction of this ease is specifically resewed for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 4232—Claimant awarded $403.40.)

KATHRYN A. DOWNEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 9, 1951.

ENSEL, MARTIN, JONES AND BLANCHARD, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when award will be made under.* Where an employee of the Secretary of State of the State of Illinois fell on a stairway during the course of her employment, and sustained rather serious injuries to her back, it was held that she was entitled to an award under Section 8 (a) of the Act.

LANSDEN, J.

On October 21, 1948, claimant, Kathryn A. Downey, was injured while employed in the office of the Secretary of State. Claimant, during office hours, while walking from the 5th floor to the 3rd floor, fell on a stairway, and sustained rather serious injuries to her back. There are no jurisdictional questions raised, and it is admitted that the case arises under the terms and provisions of the Workmen's Compensation Act pertaining to State employees.

The facts show that the claimant, at the time she was injured, was 42 years of age, unmarried, and that her earnings for the year preceding her injuries were in the amount of $2,400.00.

The facts show that the claimant has been paid her full salary mhile she was off work due to the accident.

The facts show, and we do not dispute, that claim-

ant, in an effort to aid in being cured of her injuries, incurred the following expenses:

The Deal Clinic, Springfield, Illinois	$ 11.00
Drs. J. Albert Key, Fred C. Reynolds, Lee T. Ford	$ 45.00
Drs. John J. Pleak and Barbara Pleak	$ 84.00
St. Clara's Hospital, Lincoln, Illinois	$ 28.75
St. John's Hospital, Springfield, Illinois	$ 40.00
Dr. Carl Becker, Lincoln, Illinois	$ 22.00
Prescriptions	$ 45.40
Expenses on 8 trips to St. Louis, Missouri, for the purpose of seeking medical attention	$100.00
Purchase of 2 medical support garments	$ 21.25
2 bedboards	$ 8.00

All that the Court is asked to pass on at this time is the amount of the expenses necessarily incurred by the claimant in an effort to be cured of her injuries. The Court finds the expenses above listed to be reasonable and necessary for the purposes mentioned.

An award is, therefore, entered in favor of the claimant, Kathryn A. Downey, under Section 8(a) of the Workmen's Compensation Act for **$403.40,** all of which award is payable forthwith as follows:

$ 11.00 to claimant for the use of the Deal Clinic, First National Bank Building, Springfield, Ill.

$ **45.00** to claimant for the use of Drs. J. Albert Key, Fred C. Reynolds, and Lee T. Ford, 4952 Maryland Avenue, St. Louis, Missouri.

$ **84.00** to claimant for the use of Drs. John J. Pleak and Barbara Pleak, **407** Ferguson Building, Springfield, Illinois.

$ **28.75** to claimant **for** the use of St. Clara's Hospital, Lincoln, Illinois.

$ 40.00 to claimant for the use of St. John's Hospital, Springfield, Illinois.

$ 20.00 to claimant for the use of Dr. Carl Becker, Lincoln, Illinois.

$174.65 to claimant for prescriptions, expenses to St. Louis, Missouri, medical garments and bedboards.

Harry L. Livingstone, Court Reporter, 1008 Ridgely Building, Springfield, Illinois, was employed to take and transcribe the testimony at the hearing, and has submitted charges for said services in the amount of $66.50, which the Court finds to **be** reasonable.

An award is hereby made in favor of Harry L. Liv-

ingstone in the amount of $66.50 for court reporting services.

Jurisdiction of this case is specifically reserved for further orders as from time to time may be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4247—Claimant awarded $4,963.17.)

CHARLES LOVE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 9, 1951.

GLENN O. BROWN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*claimant will not be allowed awards under both Sections 7 (h-3) and 8 (d) of the Act.* Where the Court had allowed claimant an award under Sec. 8 (d) of the Act in the sum of $821.83 for total temporary disability, and also an award of $5,785.00 under Section 7 (h-3) of the Act, the Court held that the total of the payments for temporary total disability and permanent partial disability together cannot exceed the maximum amount provided for, which was the amount of the death award; and thus the Court deducted $821.83, which had been paid to the claimant as temporary compensation, and stated that the claimant was entitled to an award of $4,963.17.

DELANEY, J.

At the January term of this Court, an opinion mas rendered in this cause allowing to the claimant an award under Section 8 (d) and Section 7 (h-3) and (1) of the Workmen's Compensation Act the total amount of a death award of $5,785.00 for permanent partial disability; claimant being married, and having one child under 16 years of age dependent upon him for support. Because of his injury, Mr. Love was paid compensation for total temporary disability at the rate of $19.50 a week for a period of 42 1/7 weeks in the amount of $821.83.

On February 7, 1951, the respondent filed its petition for rehearing, and directed our attention to the fact that in the opinion we failed to credit the respondent for the amount of $821.83, which we found had been paid to claimant for compensation for temporary total disability.

On February 16, 1951, claimant filed with the clerk a waiver of his right to answer the respondent's petition.

Respondent seeks to limit the total amount of compensation payable to the amount of a death award in accordance with Section 8 (d).

Section 8 (d) (Chapter 48, Paragraph **145** (d), Illinois Revised Statutes, **1947)** provides as follows:

"If, after the accidental injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in the cases covered by the specific schedule set forth in paragraph (e) of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs (b) and (h) of this section, equal to fifty per centum of the difference between the average amount which he earned before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident. Provided, however, if no compensation is awarded under the foregoing provisions of this paragraph, and when an accidental injury has been sustained which results in a fracture or fractures of the body or bodies of one or more vertebrae resulting in a loss of function of the back, compensation may be allowed for a period not to exceed thirty (30) weeks in addition to compensation for temporary total disability, such compensation to be in lieu of all other compensation specified hereinbefore by this paragraph."

The Supreme Court of this State has repeatedly held that in "specific loss" cases the total of the payments for temporary total disability and specific loss together could not exceed the maximum amount of a death award. In *Lundgren* v. *Industrial Commission,* **337** Ill. 246, the Court said on page 248:

"Thus it is apparent that the legislature has in this section said that an employee may have compensation, which compensation may be made up of payments for temporary total disability as well as payment for specific injuries enumerated in paragraph (e). Such compensation is, however, specifi-

cally made subject to the limitations as to time and amounts fixed in paragraphs (b) and (h); that is to say, the total maximum amount of compensation which an employee may receive is limited by the limitations in paragraphs (b) and (h). The limitation as to time contained in paragraph (h) is not applicable here and we may, therefore, disregard it."

In *Henson Robinson* Co. v. *Industrial Commission,* 386 Ill. 232, the Court said on page 236:

"The decision in the Lundgren case was filed in this Court subsequent to the effective date of the amendment of paragraph (e) aforesaid, but construed the Act as it read prior to July 1, 1929. In construing the effect of paragraph (e) as amended, we must determine and give effect to the intent of the legislature. It is apparent that, in fixing a limitation period of sixty-four weeks for compensation for temporary total incapacity and in removing from paragraph (e) the former limitations as to time and amount fixed in paragraphs (b) and (h) of Section 8, it was the intent and purpose of the legislature to alter the meaning and limitation of paragraph *(e).* It seems clear that now the provisions for temporary total incapacity and for specific injury by the terminology used are independent of one another and are not to be contained within an over-all maximum defined by the death award."

In Angerstein on "The Employer and the Workmen's Compensation Act of Illinois'' the limitations as, to time and amount of awards under Section 8 (d) are discussed in Section 282, which reads in part as follows:

"The compensation provided in paragraph (d) of Section 8 is expressly made subject to the limitation as to time and maximum amounts fixed in paragraphs (d) and (h) of Section 8. Said paragraph (h) fixes a definite limitation of time such that the compensation payments under paragraph (d) cannot extend over a period of more than eight years from the date of the accident. In other words, an award for permanent partial incapacity could not provide for payments of compensation for more than eight years from the date of accident.

"The limitation as to the total amount of ,compensation that can be awarded for permanent partial disability, as fixed by reference to paragraph (b), is that the amount can never exceed the amount which would have been payable under paragraph (a) of Section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving as provided in said paragraph (a) of Section 7."

In the case now before this Court, however, we have to determine the question of whether or not "permanent partial disability". differs from "specific loss" in this

type of case, in that the total payments of compensation for temporary total incapacity and the amount paid as an award do not exceed the total amount of a death award.

The case under consideration raises the question as to whether claimant, Charles Love, should be allowed compensation for temporary total incapacity, and also an award in the total amount of a death award.

This Court has not previously ruled on the question involved in this cause, and we have found no cases in which the Supreme Court of this State has ruled squarely on this point.

After a careful review of the claim of Charles Love, we are of the opinion that the total of the payments for temporary total disability and permanent partial disability together cannot exceed the maximum amount provided, which was the amount of a death award.

That portion of the opinion rendered at the January term, which allowed claimant, Charles Love, **42 1/7** weeks for temporary total disability in the amount of $821.83, is hereby vacated.

Claimant is entitled to an award in the amount **of** $5,785.00, less the sum allowed for temporary total disability of $821.83, leaving a balance of **$4,963.17.** The differential between claimant's earnings before and after the accident makes claimant's compensation rate $15.18, commencing on October 1, 1949, the day after he received his last compensation payment.

An award is, therefore, entered in favor of claimant, Charles Love, in the amount of $4,963.17, to be paid to him as follows:

$1,136.34 which has accrued, is payable forthwith;

$3,826.83 payable in weekly installments of $15.18, beginning March 16, 1951 for a period **of** 252 weeks, with a final payment of $1.47.

Rollin Moore was employed to take and transcribe the testimony at the hearing before the Commissioner, for which he made a charge of $70.96. We find this sum reasonable, customary and fair for the services rendered. An award is hereby entered in favor of Rollin Moore in the sum of $70.96.

These awards are subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4275—Claim denied.)

ALLAN J. BERLETT, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 9, 1951.

HANLEY AND PHILLIPS AND GILLESPIE, BURKE AND GILLESPIE, Attorneys for Claimant..

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION *ACT—when award for* ***compensation will be denied.*** Where claimant had a condition prior to his being employed by the State known as "Dupuytren's Contracture" of the hands, and it was shown that his work just aggravated it, and since it was shown that he was paid during the time he was having the aggravation cured, it was held that he was not entitled to an award under the Act.

LANSDEN, J.

Claimant, Allan J. Berlett, seeks to recover from respondent under the Workmen's compensation Act for injuries to his hands that he alleges resulted from accidents that arose out of and in the course of his employment as a highway section helper in the Division of Highways of the Department of Public Works and Buildings.

Claimant alleges that the accidents on which he bases his claim occurred between August 3, 1948, and October, 1948. His first complaint was filed on March 3, 1950, and

an amended complaint, after this Court sustained a motion to dismiss the first complaint, was filed on May **26,** 1950. The amended complaint contained allegations sufficient to bring claimant within the jurisdiction of this Court.

Respondent still maintains that this Court is without jurisdiction. In this connection, the proof in the record is hazy, but we feel that certain payments made by respondent to claimant were the equivalent of payments of compensation, and that claimant has filed his complaint within the time required by Section **24** of the Workmen's Compensation Act, and Section **22** of the Court of Claims Act. *United* **Air** *Lines* v. *Ind. Corn.,* **364** Ill. **346;** *Roebuck* v. *State,* **12** C.C.R. **236;** *La Mantia* v. *State,* No. **4141,** opinion filed October 13, 1950.

The record discloses that claimant is suffering from Dupuytren's Contracture of the hands. Since the record fails to enlighten us as to the nature of this condition, we have made some independent research to ascertain enough information for an intelligent decision of this case.

Reed and Emerson: *The Relation between Injury and Disease* (1938) at page 500 states as follows:

"Dupuytren's contraction or deformity, that is, the permanent contraction of the little, ring, and in extreme cases middle fingers, is a fairly common abnormality. This starts as a slight puckering of the skin and subcutaneous tissues at the base of these fingers, which, slowly increasing in grades, progressively flexes them into the palm of the hand, rendering them more or less useless. This condition always starts in one hand, but eventually both become symmetrically deformed.

"While we know nothing concerning the cause of Dupuytren's contraction, yet there is no evidence that it ever is in any way related to trauma, notwithstanding the fact that in many of the older textbooks injury **was** given as its chief cause. Since, however, it develops in men engaged in all trades and professions, including occupations which do not necessarily traumatize the palm, since in all cases it develops in exactly the same manner, and since sooner or later both hands practically always become similarly

affected, it is difficult to accept any theory which ascribes it to a single trauma."

Gray's: *Attorneys' Textbook of Medicine* **(1949)** Vol. **1,** pars. **3.25-3.28** has this to say:

"DUPUYTREN'S CONTRACTURE. P. 3.25

"Dupuytren's contracture is a relatively infrequent disease condition involving the palmar fascia, resulting in major, progressive disability. The condition results from inflammation within the fascia, leading to overgrowth. The tendons are not involved, although they appear as tense cord-like ridges when effort to extend the fingers is made. **As** time passes on, the fibrous structures within the palm of the hand become further thickened and contract, limiting motion of the fingers, finally producing a claw-like, useless hand.

"Cause P. ***3.26***

"The cause is open to considerable question. Although rarely found in people under fifty years of age, heredity is believed to play a part. Certainly a similar condition is not infrequently found in the family of the sufferer. Whether trauma is definitely a cause or not is open to question, although many authorities report increased frequency among those whose occupations require pulling, squeezing or pressing. **A** history of repeated minor injuries to the palm of the hand or of a single excessive blow is not unusual. **However,** considering the rarity of the disease, and how many occupations require excessive force to the palm of the hand, it is very questionable if work plays much if any part. The patient looks into the past and all of us can usually recall a blow to the hand within the recent past. **Thus** it is likely that the blow is charged as a cause, without merit, and since many occupations require more than the average of force to the palm of the hand, it is not surprising that occupation is frequently charged as the causative factor. However, the general consensus of opinion fails to ascribe any cause to Dupuytren's contracture.

"Symptoms P. **3.27**

"The difficulty first begins, as a usual rule, slowly and insidiously, with tightness in the palm, more especially of the ring or little fingers. Neuralgic pains may long continue before evidence of any particular involvement. Ultimately, difficulty in extension of the ring or little fingers becomes apparent, later to include the remaining fingers. One or several fibrous nodes may be found, usually at the base of the little finger, at first not attached to the skin, but later adherent.

"Contractions are late, first involving the proximal phalangeal joints, and later the distal. Finally, the fingers may become fixed. Months or years thereafter, a similar difficulty usually appears in the other hand.

"Treatment P. 3.28

"Treatment has been unsuccessful except through surgical means. The fact that removal of all trauma of consequence fails to stop progress is **a** cardinal argument against multiple minor traumata as causative factors. **As a** usual rule, the unfortunate condition progresses unless the fascia with suffi-

cient skin is surgically removed. This necessitates a large graft of skin and underlying tissue, usually taken from the abdomen, to prevent undue traction at the edges too widely spread to permit apposition by sutures."

On seven occasions between August 3, 1948, and October 19, 1948, claimant operated for several hours a compressed air-operated jack hammer to cut and break out old concrete on Highway 115 in Ford County, Illinois. Since the pounding of the jack hammer aggravated claimant's already existing condition of Dupuytren's Contracture, he naturally complained to his superiors, and in December, 1948, he was sent to Chicago for examination and treatment by Dr. H. B. Thomas, Professor Emeritus of Orthopedics, College of Medicine of the University of Illinois.

Dr. Thomas diagnosed the disease, and conceded that it was aggravated by the pounding of the jack hammer, and recommended that he not be allowed to use the jack hammer any more. Dr. Thomas treated claimant's hands and by February, 1949, he found that such treatment had cured and relieved claimant of all aggravation of the contracture, although such 'was still present.

Claimant's testimony at the hearing corroborates Dr. Thomas, and, we, therefore, conclude that, the original contracture not having been the result of an accident and all aggravation thereof having been cured, claimant is not entitled to an award..

Hugo Antonacci, Springfield, Illinois, was employed to take and transcribe the testimony at the hearing before Commissioner Summers. His charges amount to $35.40, which charges are reasonable and customary. An award is entered in favor of Hugo Antonacci in the sum of $35.40.

An award to claimant, Allan J. Berlett, is denied.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 4282—Claim denied.)

GEORGE JOHNSTON, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

Opinion filed March 9, 1951.

THOMAS A. BURNS, Attorney for Claimant:

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

NEGLIGENCE—*failure to show—State not liable for damages sustained to claimant's crops and home from flood waters, when evidence fails to show negligence on the part of the respondent.* Where claimant sought to recover damages from the respondent for losses sustained to his crops and home because of a flood, it was held that claimant must prove that the flood was caused by the negligence of the respondent, and, since this was not so shown, he could not recover.

LANSDEN, J.

George Johnston, claimant, filed his claim herein on March 17, 1950, for damages sustained by him in loss of crops and damages to his house, as a result of the flooding of his property during the year 1949 and early 1950, which he alleges occurred as a result of the negligence of the respondent in failing to keep tile across its property free and unobstructed. The claimant was the owner of five acres located in the Northeast quarter of Section seven, Township thirty North, Range thirteen West of the 2nd P. M. situated in Kankakee County, Illinois, which land adjoins respondent's-land on the west, except that they are separated by Illinois State Highway No. 49.

Claimant's lands dominant to those of respondent as regards surface drainage, and until about 1912 this area was traversed and drained by natural water course known as Little Brainard Creek. This area is also within the Gar Creek Drainage District of Kankakee County, and about 1912 the District installed an artificial water course, covered tile, across the lands now owned by claimant, and to the outlet to the Kankakee River.

Respondent laid the tile across its lands in 1912, being on the premises of the Kankakee State Hospital. The tile connected with that from claimant's lands at an inlet at the boundary of the grounds of the institution, and carried water ultimately to the Kankakee River.

Respondent's lands being servient to those of claimant, the former has a legal duty not to obstruct the flow, of water from claimant's lands. *Gilman* v. *Madison, R. R.* Co., 49 Ill. 484.

The evidence shows that such inlet is considerably lower than elaimant's lands, and that, when the tile on respondent's premises is blocked, water bubbles out of the manhole at the top of the inlet and floods respondent's lands. During no part of 1949 and 1950 did water boil out of such inlet and flood any part of respondent's lands.

We, therefore, conclude that the obstruction, if any, causing the alleged flooding of claimant's land was not on respondent's lands, and any award must be denied.

An award to claimant, George Johnston, is denied.

(No. 4308—Claimant awarded $3,481.00.)

COUNTY OF RANDOLPH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 9, 1951.

JOHN A. HEUER, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

HABEAS CORPUS — EXPENSES INCURRED BY COUNTY — when allowed. Where a county incurs expenses, costs, and fees in a Habeas Corpus proceeding, or in many such proceedings brought in such counties involving nonresidents of such counties, who may be confined in State penal or charitable institutions, the county may be reimbursed for such expenses, costs, and fees in accordance with the provisions of Sections 37, 38, and 39 of Chap

ter 65 of the Illinois Revised Statutes. Court held also that the State's Attorney of the county is entitled to a fee of $20.00 for each case that it was necessary for him to make an appearance in. Court held that the Sheriff is only entitled to a fee for the returning of each writ, and for no other acts whatever they may be.

LANSDEN, J.

Claimant, County of Randolph, Illinois, by the chairman of its Board of County Commissioners and its State's Attorney, seeks to recover from respondent the sum of $3,752.20. This action is based on a specific statute, which confers jurisdiction on this Court to hear cases brought thereunder. Ill. Rev. Stat. 1949, Chap. 65, Sees. 37-39; Chap. 37, Sec. 439.8.

The purpose of such statute is to reimburse certain counties in Illinois for expenses, costs and fees incurred because of the large volume of petitions for writs of habeas corpus *in forma pauperis* filed therein. The Counties of Will and Randolph are the principal beneficiaries of such statute.

Such counties have previously been given four awards in this Court, and those cases have decided that certain fees, expenses and costs are reimbursable under such statute. *County of Will* v. *State*, 18 C.C.R. 189; *County of Will* v. *State*, No. 4218, opinion filed May 9, 1950; *County of Will* v. *State*, No. 4318, opinion filed September 19, 1950; *County of Randolph* v. *State*, No. 4157, opinion filed February 14, 1950.

A stipulation of facts has been filed herein, and is hereby approved.

The stipulation discloses that the Illinois State Penitentiary is located in Randolph County. Between December 27,1948 and December 1,1949, 209 petitions for writs of habeas corpus were filed *in forma pauperis* in the office of the Clerk of the Circuit Court of Randolph County by inmates of such institution. None of the peti-

tioners were at the time of their commitment residents or committed by any court of Randolph County. In 10 cases the Clerk's filing fee was paid by the petitioner. Writs were awarded, and hearings were held in 113 cases. In each of the 113 cases the State's Attorney of Randolph County represented the People of this State at the hearing, and, in addition, the Clerk of the Circuit Court was required to furnish a photostatic copy of the petition to the Attorney General of Illinois at a cost of $1.00 per petition.

In the above cited cases, we found that the Clerk of the Circuit Court was entitled to a $5.00 filing fee in each case, and to be reimbursed for the furnishing of photostats at cost. In the *County of Randolph* case, *supra*, we found the State's Attorney to be entitled to a fee of $20.00 for each case in which he appeared at the hearing representing the People.

Previously, as he does herein, the Sheriff of Randolph County sought recovery for serving-and returning the writs of habeas corpus, and for mileage. In *County of Randolph* v. *State*, No. 4157, opinion filed February 14, 1950, we decided that the Sheriff was not entitled to any fees for serving the writs, or for mileage, but that he was entitled to $1.00 for returning each writ. We reached this conclusion because of the silence of the applicable section of the Fees and Salaries Act, Ill. Rev. Stat. 1949, Chap. 53, Sec. 37, regarding fees for service, and mileage in connection with writs of habeas corpus. We adhere to our previous conclusion. *Irvin* v. *County of Alexander*, 63 Ill. *528.*

The Clerk of the Circuit Court of Randolph County was entitled to receive $5.00 for each petition filed, or the sum of $1,045.00, but he did receive $50.00 in 10 cases, leaving a balance of $995.00 due. Ill. Rev. Stat. 1949,

Chap. 53, Sec. 31. In addition, he was entitled to receive $1.00 for photostats in 113 cases, or the sum of $113.00.

The Sheriff of Randolph County was entitled to receive $1.00 for returning each of the **113** writs of habeas corpus or the sum of $113.00. Ill. Rev. Stat. 1949, Chap. 53, Sec. 37.

The State's Attorney of Randolph County was entitled to receive $20.00 for each of the 113 cases in which he appeared at the hearing representing the People, or the sum of $2,260.00. Ill. Rev. Stat. 1949, Chap. *53,* Sec. 8.

An award is, therefore, entered in favor of the County of Randolph for the sum of $3,481.00.

(No. 4320—Claimant awarded $70.00.)

SANDUSKY CORDER, Claimant, ***vs.*** STATE OF ILLINOIS, Respondent.

Opinion filed March 9, 1951.

WILBUR D. CAPPS, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

MATERIALS AND SUPPLIES—***where claim will be allowed*** *for* ***payment even though statutory limitations precluded its payment.*** Where claimant placed markers on certain veterans' graves in accordance with directions from the Military and Naval Department of the State of Illinois, and the bill was not paid because of the lapse of the appropriation out of which it could have been paid, an award for the amount may be made.

DELANEY, J.

Claimant, Sandusky Corder, filed his complaint and amended complaint setting forth that pursuant to an Act of the General Assembly of the State of Illinois entitled "An Act to provide for the registration of burial places of soldiers and sailors serving in all United States wars, or during the years 1940 or 1941, and for locating such burial places and reporting them to the Federal

government, and transporting to such burial places and setting up headstones provided by the Federal government", approved July 8, 1935, and the several amendments thereto; and pursuant also to instructions from the Military and Naval Department, War Veterans' Graves Registration of the State of Illinois, claimant did, in Hancock County, Illinois, at the time set forth in the bill of particulars filed herein, and at the time hereinafter mentioned, transport and erect headstones furnished by the Federal government at the graves of certain named deceased veterans of United States' wars.

The record consists of the complaint, amended complaint, bill of particulars, report of the Adjutant General, dated January 8, 1951, signed by Leo M. Boyle, Major General, the Adjutant General, which has been filed in this case under Rule 16 of the Court, and which constitutes the record in this cause.

Claimant erected seven headstones; and, as a result of the transportation and erection thereof, there is now due claimant the sum of $70.00.

The seven markers were placed at the respective veterans' graves prior to July 1, 1949, and were payable from funds allocated for the 65th biennium, but payment was not cleared before the lapse in appropriation.

This Court has repeatedly held that in the event certain articles are properly furnished, and the State is directed by statute to pay for same, and a bill therefor has been submitted within a reasonable time, but the same was not approved and vouchered for payment before the lapse of the appropriation from which it is payable, an award for the reasonable value of the items furnished will be made, where, at the time the expenses were incurred there were sufficient funds remaining un-

expended in the appraprіation to pay for the same. *(Carl S. Johnson* v. *State,* 16 C.C.R. 96; *Rock Island Sand amd Gravel Co.* v. *State, 8* C.C.R. 165; *Oak Park Hospital* v. *State,* 11 C.C.R. 219; *Yourtee-Roberts Sand Co.* v. *State,* 14 C.C.R. 124.)

An award is, therefore, entered in favor of claimant, Sandusky Corder, for the sum of $70.00.

(No. 4336—Claimant awarded $180.75.)

FRANK T. CLIFFORD, JR., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion filed March 9,* 1951.**

WILLIAM G. JUERGENS, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where an employee of the Department of Public Safety, while in the course of his duties as a guard at the Menard Branch of the Illinois State Penitentiary, sustained injuries, which resulted in the amputation of the first phalanx of the fourth finger of his left hand, the Court stated that claimant had suffered a 50 per cent partial, permanent loss of use of the fourth finger, and was entitled to an award under the Act.

DELANEY, J.

On April 22, 1950 the claimant, Frank T. Clifford, Jr., employed by the respondent in the Department of Public Safety, while acting in the capacity of a guard in the Menard Branch of the Illinois State Penitentiary, was assigned to drive a State owned truck. On the above date he was instructed to remove a pushcart from the truck at the outside warehouse of the institution. At about 10:30 A.M. while unloading the pushcart, Mr. Clifford lost control of the cart, and the fourth finger, commonly called the little finger, of his left hand became caught between the pushcart tongue and a board. The

finger was severely lacerated and mashed. He reported to the Prison Hospital, but inasmuch as there was no doctor in attendance, he was sent to Dr. I. D. Newmark, at Chester, Illinois, for medical attention. Dr. Newmark found that there was an evulsion of the distal end of said finger with the nail, and one-third (%) of the bone damaged, and the lower one-half (½) of the flesh was hanging by a thin shred of tissue. Dr. Newmark found it necessary to amputate the first or distal phalanx of said fourth finger.

The record consists of the complaint, departmental report, and a stipulation in lieu of evidence.

At the time of the accident, claimant and respondent were operating under the provisions of the Workmen's Compensation Act of this State, and a claim for compensation was made within the time .provided by the Act. The accident arose out of and in the course of claimant's employment. No claim is made for temporary total disability, nor for medical expenses, which were paid by the respondent. Claim, however, is made for total permanent disability.

Claimant was married, and he had two step-children under 16 years of age dependent upon him for support at the time of the accident, and the relationship of loco parentis is shown to have existed.

He was first employed on October 9, 1949, and received a monthly salary of **$237.00** during the entire period of his employment 'at the Menard Branch of the Illinois State Penitentiary, which terminated September 18, 1950. Other Department employees, working in the same classification as Mr. Clifford, worked continuously through the year and earned $2,844.00 a year. His compensation rate is, therefore, the maximum of $16.00.

The injury having occurred after July 1, 1949, this

must be increased 50 per cent, making a compensation rate of $24.00 a week.

From the medical report as shown in the Departmental Report filed herein, we are of the opinion that, as a result of the accident on April **22,** 1950, claimant has suffered a 50 per cent partial, permanent loss of use of the fourth finger, commonly called the little finger of his left hand, being 10 weeks.

An award is, therefore, made in favor of claimant, Frank T. Clifford, Jr., for the sum of $240.00. The respondent has paid the claimant the sum of $59.25 as an overpayment for non-productive time from the date of his injury, April **22,** 1950, until he returned to work on April 29, 1950. This amount shall be deducted from claimant's award. This would make a total award due claimant of $180.75, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4339—Claimant awarded $382.50.)

THOMAS WILLIAM CRUTCHFIELD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 9, 1951.

THOMAS W. KEHR, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award will ***be*** made *under. Where an employee of the Department of Public Works and Buildings, Division of Highways, in the course of his duties as a common laborer was hit by a supply truck, which caused him to spill hot asphalt over his left hand and ann, Court stated claimant had suffered a 10 per cent permanent, partial loss of use of his left hand, and he was entitled to an award under the Act.

DELANEY, J.

Claimant was injured on September 26, 1949 in an accident arising out of and in the course of his employment as a common laborer in the Department of Public Works and Buildings, Division of Highways.

On September 26, 1949 Mr. Crutchfield was one of a group of men engaged in filling cracks in concrete pavement with molten bituminous material. The **work** was being done on S.B.I. Route 29 in Peoria County. While working approximately five miles south of Chillicothe, Mr. Crutchfield was walking along the edge of the pavement to the next point of operation, when the supply truck passed him. The sandbox, which extended over the side of the truck body, struck Mr. Crutchfield, knocking him down. As he fell, hot asphalt, which he was carrying in a pouring can, was spilled over his left hand and arm.

His superior took him to Dr. S. A. Smith in Chillicothe for treatment.

On September 27, 1949, Dr. Smith submitted the following report to the Division of Highways:

"Nature **of** injury—First and second degree bums left hand and **arm."**

On January 14, 1950, Dr. Smith sent the Division of Highways the following report:

"Thomas Crutchfield who was recently bumed while at work on the State highway **is** suffering with a **25** per cent disability of the left hand due to contracture of the extensor tendons."

From the testimony introduced into the record, and the observations of Commissioner Henry S. Wise, we are of the opinion claimant, Thomas William Crutchfield, has suffered a 10 per cent permanent, partial loss of use of his left hand.

No jurisdictional questions were raised.

The record consists of the complaint, departmental report, transcript of evidence and stipulation waiving briefs of both parties.

At the time of the accident, claimant was 72 years of age, married, but had no children under 18 years of age dependent upon him for support. His earnings in the year preceding September 26, 1949 totalled $1,931.80.

Claimant continued to work after the accident, and there was no payment of compensation for loss of time. The State of Illinois paid a bill of $63.00 to Dr. S. A. Smith for professional services.

Claimant is entitled to 10 per cent partial, permanent loss of use of his left hand, being 17 weeks at the maximum rate of $15.00 per week. The injury having **occurred** after July 1, 1949, this amount must **be** increased 50 per cent, making a compensation rate of $22.50 per week.

John Nelson Rice took and transcribed the testimony, for which he submitted his charge of **$14.70,** which we find is fair, reasonable and customary.

An award is made to claimant, Thomas William Crutchfield,-in the sum of $382.50, all of which has accrued and is payable forthwith.

An award is also made to John Nelson Rice in the sum of $14.70, payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4348—Claimant awarded $1,195.94.)

CLARENCE C. DIVER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 9, 1951.

McCONNELL, KENNEDY AND McCONNELL, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION *Am—when an award will be made under.* Where an employee of the Division of Highways of the State of Illinois, while in the course of his employment, had an accident while loading asphalt on a truck, which resulted in a fracture of the right humerus, the Court stated that claimant had suffered a 25 per cent partial, permanent loss of use of his right arm, and was entitled to an award under the Act. Section 8 of the Act applies.

DELANEY, J.

This is a claim of Clarence C. Diver against the respondent, the State of Illinois, for personal injury sustained on April 17, 1950.

The complaint alleges that Mr. Diver and his foreman drove a Division of Highway's truck to the Rock Island Railroad Depot in Chillicothe, Peoria County, Illinois, to secure a load of drums of asphalt, which was to be moved to a Division storage yard. The truck was backed up to a box car. Mr. Diver stepped between the rear end of the truck and the box car to hand a crowbar to a fellow employee in the box car. While standing between the truck and the box car, the empty truck began to roll backwards. Mr. Diver attempted to hold the truck with his hands. The backward motion of the truck forced his elbows against the side of the box car, fracturing the bone of the lower right arm.

Mr. Diver's foreman took him to Dr. H. V. Thomas of Chillicothe, who examined Mr. Diver, and sent him to Dr. Hugh Cooper, a specialist n orthopedic surgery, in Peoria.

On April 19, 1950 Dr. Thomas sent the following report to the Division of Highways:

"Nature of injury—Fragment broken off lower condyle right humerus."

On April 25, 1950 Dr. Hugh Cooper reported as follows:

"Nature of injury—Fracture of head of the right radius. Treatment—Operated April **24,** 1950. Arthrotomy and removal of the head of the radius."

On May **31,** 1950 and on August *3,* 1950, Dr. Hugh Cooper reported to the Department that claimant suffered probably a 20 per cent permanent loss of function of his right arm.

A medical report of Dr. Harold F. Diller, wherein the doctor stated claimant had suffered a 30 per cent permanent, partial loss of use of the right arm, mas introduced into the record by stipulation.

Mr. Diver was 28 years of age, married, and had one child under 16 years of age. Claimant earned $2,329.03 in the year preceding his injury.

The record consists of the complaint, departmental report, stipulation waiving briefs of both parties, transcript of evidence and claimant's Exhibit No. **1,** being the report of Dr. Diller, which was stipulated into record.

There is but one question, therefore, for this Court to determine—that is the nature and extent of his injury, and whether or not said injury has caused him any degree of permanent disability, as defined under the terms and provisions of the Workmen's Compensation Act of the State of Illinois, Section 8, Paragraph (e) **13.**

Reviewing the opinion of Dr. Hugh Cooper and Dr. Harold F. Diller, and considering the age of claimant—28 years, and the fact that he has some limitation in movement, and there is no control movement in his right elbow, we feel Mr. Diver sustained a permanent impairment estimated to be in the neighborhood of **25** per cent loss of use of his right arm.

Mr. Diver was totally disabled because of this injury from April 18 to May 1, 1950, inclusive. He was paid full salary for this lost time in the amount of $92.19. He returned to work on May 2, 1950. The Division paid the following creditors in connection with the injury of Mr. Diver: Dr, H. V. Thomas, Chillicothe, $3.00; Dr. Hugh Cooper, Peoria, $130.00; and St. Francis Hospital, Peoria, $95.40, making a total of $228.40.

No jurisdictional questions were raised.

Claimant is entitled to 25 per cent partial, permanent loss of use of his right arm being 56¼ weeks, at the maximum rate of $15.00 per week. The injury having occurred after July 1, 1949, this must be increased 50 per cent, making a compensation rate of $22.50 per week, or a total of $1,265.63. Since his period of disability was less than 28 days, he should be allowed one meek temporary total disability or $22.50.

Mary I. Reynolds took and transcribed the testimony, for which she submitted her charge of $43.50, which we find is fair, reasonable and customary.

An award is made to claimant, Clarence C. Diver, in the sum of $1,265.63 from which must be deducted the excessive payment for non-productive time in the amount of $69.69, leaving a balance of $1,195.94, payable to him as follows:

$999.63 which has accrued, is payable forthwith;
$196.31 is payable in weekly installments of $22.50 per week, beginning March 16, 1951, for a period of 8 weeks, with an additional final payment of $16.31.

An award is also made to Mary I. Reynolds in the sum of $43.50, payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4368—Claimant awarded $6,675.00.)

FLOSSIE V. HENSON, WIDOW, ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion fled March 9, 1951.

FLOSSIE V. HENSON, WIDOW, ET AL, Claimant, pro se.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where an award Will be made under.* Where a Maintenance Equipment Operator of the Division of Highways of the Departinent **of** Public **Works** and Buildings was killed by a truck tractor-semi-trailer, while in the course of his employment, Court held his widow was entitled to recover an award under the Act. Section 7 (a), (f), (h-3) and (l) of the Act apply.

LANSDEN, **J.**

Claimant, Flossie V. Henson, widow of Robert Walter Henson, deceased, seeks to recover from respondent under the Workmen's Compensation Act for the death of her husband as the result of an accident that arose out of and in the course of his employment as a Maintenance Equipment Operator in the Division of Highways of the Department of Public Works and Buildings.

On September 7, 1950, decedent was one of three men assigned to operate a centerlining machine on Route 127 south of Donnelson, Illinois. This machine, when in operation, painted the black line at the center of the paved highway. The three men pumped air into the paint tank to assure a free flow of paint during the centerlining activities. They then waited on the shoulder **of** the highway for a State Highway Police escort, which was to safeguard them and the machine while the operation proceeded down the center of the highway.

While waiting, a valve on a paint line of the machine burst, throwing **a** heavy spray of black paint into the air. To avoid this shower of paint, two **of** the men ran down the shoulder of the highway, but decedent

ran across the highway and into the path of a truck tractor-semi-trailer unit. The driver tried to avoid hitting decedent, but the left front fender of the truck struck him and knocked him onto the highway shoulder.

Decedent was promptly taken in an ambulance to the Hillsboro Hospital, Hillsboro, Illinois, but was pronounced dead on arrival.

No jurisdictional questions are involved. Respondent has paid for the emergency ambulance service, and claimant is entitled to an award,

On the date of the accident, decedent was 55 years of age, married and living with his wife, and had one son, Franklin Dean Henson, born June 10, 1933, dependent upon him for support.

Decedent's earnings from respondent in the year prior to his death amounted to $2,700.00. The rate of compensation is, therefore, $22.50 per week.

Bernice Naumann, Paris, Illinois, was employed to take and transcribe the testimony at the hearing before Commissioner Wise. Reasonable charges in the amount of $15.80 were incurred, and an award in favor of Bernice Naumann is'hereby entered for the sum of $15.80.

An award is entered in favor of Flossie V. Henson, widow of Robert Walter Henson, deceased, under Section 7 (a) (f) (h-3) (L) of the Workmen's Compensation Act in the sum of $6,675.00, payable as follows:

$ 585.00, which has accrued and is payable forthwith,
$6,090.00, which is payable in weekly installments of $22.50 per week, commencing on March 16, 1951, for a period of 270 weeks, plus one final payment of $15.00.

Jurisdiction of this case is specifically reserved for the entry of such orders as may from time to time be necessary.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 3025—Claimant awarded $2,403.09.)

ELVA JENNINGS PENWELL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion *fled* April 10, 1951.

JOHN W. PREIHS, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* additional allowance will *be* made under. Where an employee of the Illinois Soldiers' and Sailors' Children's School incurred serious permanent injuries and had been awarded (Penwell v. State, 11 C.C.R. 365) $5,500.00 for total disability, $8,215.93 for necessary medical, surgical and hospital services, and an annual pension of $660.00, and then later received allowances for further medical, hospital and nursing services, Court held that where there is no change in physical condition, claimant was entitled to additional allowances for medical and nurses' services under the Act, and reserved for future determination claimant's need **for** further medical, surgical and hospital services.

DELANEY, J.

Claimant was injured on February 2, 1936 in an accident arising out of and in the course of her employment as a Supervisor at the Illinois Soldiers' and Sailors' Children's School at Normal, Illinois. The injury was serious, causing temporary blindness and general paralysis. The facts are fully detailed in the case *of Penwell* v. *State,* 11 C.C.R. *365,* in which an award of $5,500.00 was made to the claimant for total permanent disability, $8,215.95 for necessary medical, surgical, and hospital services expended or incurred to and including October 22, 1940, and an annual pension of $660.00. On February 10, 1942, a further award was made to claimant for medical and hospital expenses incurred from October 22, 1940 to January 1, 1942 in the amount of $1,129.82. On March 10, 1943, a further award was made to claimant for medical and hospital expenses from January 1, 1942 to December 31, 1942 in the amount of $1,164.15. On March 15, 1944, a further award was made

to claimant for medical and hospital expenses from January 1, 1943 to and including September 30, 1948 in the amount of $853.07. On April 17, 1945, a further award was made to claimant for medical and nursing expenses incurred from October 1, 1943 to and including February 28, 1945 in the amount of $1,955.29. On September 12, 1946, a further award was made to claimant for medical and nursing expenses incurred from Februafy 28, 1945 to and including April 1, 1946 in the amount of $1,646.12. On June 5, 1947, a further award was made to claimant for medical and nursing expenses incurred from April 1, 1946 to and including April 1, 1947 in the amount of $2,108.30. On September 22, 1948, a further award was made to claimant for medical and nursing expenses incurred from April 1, 1947 to and including April 1, 1948 in the amount of $2,207.80. On April 19, 1949, a further award was made to claimant for medical and nursing expenses incurred from April 1, 1948 to and including February 1, 1949. On May 9, 1950, a further award was made to claimant for medical and nursing expenses incurred from February 1, 1949 to and including February 1, 1950 in the amount of $2,316.09. Claim is now being made for an additional award of $2,403.09 for medical and nursing expenses from February 1, 1950 to and including February 1, 1951.

Claimant remains totally paralyzed from the waist down, the paralysis being of a spastic type; her physical condition has not improved. She has no control over her lower limbs, nor over her urine and faeces. From February 1, 1950 to and including February 1, 1951, she has been required to relieve her of her injury, to prevent deformity, to stimulate circulation, and for relief of bedsores, to employ and receive medical services of nurses or attendants to move her to and from her bed,

to change her bed clothing at least three or four times a day, to administer light treatment to the affected parts of her paralyzed body, and to rub her body with ointments prescribed by her physician. Because of the complete paralysis of her lower abdomen and legs, the functioning of her kidneys and bladder is impaired, and medical attention is required to flush these organs to prevent infection arising from her impaired circulation and paralysis. The services of a physician are needed almost daily, and must be rendered in her home.

Claimant has, therefore, employed a physician on a monthly basis at a charge of $90.00 per month, which is a lesser rate than ordinarily charged, and for which she seeks reimbursement in the total sum of $1,098.50, which sum includes X-Rays. Claimant also seeks reimbursement at the rate of $1.00 per day in the amount of $365.00 for board and room of attending nurses. Such expenditure obviates the employment of both a day and a night nurse. In addition, claimant has expended for nursing services $754.35, and for drugs and supplies, $185.24. She has submitted to the Court, with her verified petition, the original receipts and vouchers showing payment of these respective items.

An award is, therefore, made to claimant for medical and nursing expenses from February 1, 1950 to and including February 1, 1951 in the sum of $2,403.09, which has accrued and is payable forthwith. The Court reserves for future determination claimant's need for further medical, surgical and hospital services.

(No. 4258—Claimant awarded $3,057.60.)

NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where an employee of the Division of Highways of the State of Illinois, while in the course of his employment, was injured while assisting in the loading of a power mower onto a truck, which resulted in the rupturing of an intervertebral disc in his back and also impairment of his left knee, Court stated he was entitled to an'award under the Act. Sections 8 (d) and (h) *of* the Act apply.

Court stated, "Claimant will be permitted to have both an award for temporary total disability and an award for permanent partial disability when they together do not exceed the maximum amount provided for, which is the amount of a death award".

DELANEY, J.

Claimant, Everett H. Bonham, was employed as a laborer on July 26, **1948,** in the Division of Highways of the Department of Public Works and Buildings. Claimant was 50 years of age, married, and had no children under 16 years of age dependent on him for support. On that date claimant was one of a group of employees assigned to assist in loading a power mower on to a truck. Planks had been laid from the rear of a truck bed to the pavement, thus making a ramp up which the tractor was to be driven onto the truck. Mr. Bonham was driving the power'mower, and as the rear wheels approached the upper end of the plank ramp, the planks slipped off the truck allowing the rear of the mower to fall to the pavement. The mower teetered perpendicularly on the rear wheels, with Mr. Bonham's left leg wedged under the steering wheel. He used his right leg and foot to press against the tractor to prevent it from

tipping over upon him, and forcibly bending his left knee backwards. The weight of the teetering power mower was carried by the region of Mr. Bonham's hips and lower back, which were resting on the pavement. Fellow employees immediately extricated Mr. Bonham from the power mower, and took him to St. Anthony's Hospital in Effingham, where Dr. E. L. Damron was placed in charge of the case.

On July 31,1948, Dr. Damron prepared the following report:

"Nature of injury, ligaments of left leg bruised and tom. Knee bruised, lower lumbar and sacral region of the back bruised, abrasions of the entire lower back. Bruised over body."

Dr. Fred Reynolds examined claimant and on February 7, 1949, made the following report:

"It was our feeling that he was suffering from a ruptured intervertebral disc and a flexion deformity of the left knee, and we recommend that he have hospitalization for myelograms, and removal of the disc should it be indicated; and, also, at the same time to have wedging plasters applied to the left leg in an effort to strengthen the knee."

Claimant was employed intermittently by the Division of Highways from the date of his first employment until the date of his injury. The wage being paid claimant on July 26, 1948, was 90 cents an hour, and the Division had paid him $902.20 in the year preceding his injury. Claimant was paid compensation. for total temporary disability resulting from his injury at the rate of $18.00 a week for the period July 27, 1948, to August 15, 1949, inclusive, in the amount of $949.96. The Division has paid the following creditors in connection with Mr. Bonham's injury: Dr. Fred C. Reynolds, $310.00; Dr. Wendell G. Scott (X-Ray), $30.00; Dr. E. L. Damron, $80.00; Dr. W. J. Gillesby, $25.00; St. Anthony's Hospital, $244.20; Barnes Hospital, $157.78; and, including expense to claimant of $97.22, or a total of $944.20.

Claimant, and witnesses for claimant, testified that claimant operates a 90 acre farm; that about 51 acres of this farm are under cultivation, and the rest in pasture; that he owns about 7 cows and about 28 pigs, at the time of the rehearing before Commissioner Summers. His son works a 20 acre farm nearby. Claimant has operated this farm both before and after his injury. Since his injury, he has been unable to do any kind of work except the farm chores: milking and caring for stock. The record shows that the value of the work claimant can do around the farm at the present time is $30.00 a month, or the sum of $7.50 per week. Claimant's weekly earnings were $18.80 before his injury. The differential between Mr. Bonham's earnings before the accident, and his ability to earn thereafter in other employment in work of a lighter nature is $11.30 a week, 50 per cent of this average weekly difference in wages would be $5.65 a week, or the sum of $293.80 a year. Under Section 8 (d) and (m), claimant's compensation rate is $7.35 weekly.

The testimony tends to show a permanent partial incapacity. From the record in this cause, and the observations of Commissioner Summers of this Court, we are of the opinion claimant has suffered a 25 per cent permanent partial disability.

Claimant will be allowed the sum of $949.96 paid for temporary total disability. This case differs from the case of *Charles Love* vs. *State of Illinois,* No. 4247, in that the total payments for temporary total disability and permanent partial disability together do not exceed the maximum amount provided, which is the amount of a death award.

Claimant is entitled to an award under Section 8 (d) of the Workmen's Compensation Act for permanent par.

tial disability in the amount of $5,200.00. However, under Section 8 (h) of the Workmen's Compensation Act, except in case of complete disability, compensation payments shall not extend over a period of more than eight years, from the date of the accident. Therefore, on the basis of Section 8 (h) claimant, Everett H. Bonham, is entitled to an award of $3,057.60.

An award is, therefore, entered in favor of claimant, Everett H. Bonham, in the amount of $3,057.60 to be paid to him as follows:

$ 633.15 which has accrued, is payable forthwith;
$2,424.45 payable in weekly installments of $7.35, beginning April 17, 1951 for a period of 329 weeks, with a final payment of $6.30.

Marion McKnelly was employed to take and transcribe the evidence at the hearings before Commissioner Summers. Charges in the amount of $40.00 were incurred for these services, which charges are fair, reasonable and customary. An award is, therefore, entered in favor of Marion McKnelly in the amount of $40.00 payable forthwith.

This award is subject *to* the approval of the Governor, as provided by Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4284—Claimant awarded $1,469.35.)

HAZEL FLOWERS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 10, 1951.

FRANK R. SULLIVAN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made* under. Where an employee of the Department of Registration and Education of the State of Illinois, while in the course of her employment, injured her back

while putting typewriter away at the end of the day, which resulted in a 25 per cent loss of the use of her left leg, Court stated that she was entitled to an award under the Act.

DELANEY, J.

On June 10, 1949, claimant, Hazel Flowers, an employee of the respondent in the Department of Registration and Education, while preparing to leave the office for the day, injured her back putting her typewriter away. Her desk had a folding top, and the typewriter was not permanently affixed to the desk. While lowering the top, the typewriter slipped, and the force of the movement jerked her across the desk, and caused a severe injury to the lower part of her back.

Claimant continued to work until June 23, 1949. On June 24, 1949 claimant entered Our Saviour's Hospital at Jacksonville, Illinois, where she was attended by Dr. H. V. Norris. X-Rays were taken, but these were negative for any bone injury. Dr. Norris diagnosed the injury as a severe lower back sprain with a possible intervertebral disc injury, but claimant refused to have said tests made, and, therefore, there is no proof of any injury to a vertebra. Claimant was hospitalized from June 24, 1949 to August 5, 1949. After leaving the hospital; she stayed in the Herman Koeller home for three weeks in Springfield, and then with her sister in Jacksonville until February 1, 1950, at which date she returned to work with the State of Illinois, but not with the Department of Registration and Education. Dr. Norris testified "that the disc was located between the vertebra, between the vertebral bodies. It might be compared to sort of a sponge rubber cushion with semi-liquid center, which, when ruptured, pushes the shoulder backward, and sometimes causes pressure on the nerves which makes the exit from the spine canal in this area,

which is responsible, in cases in which it is present, for radiation of pain down the nerves to the leg." The State of Illinois paid the hospital bill in the amount of $433.50, and the bill of Dr. Norris in the amount of $76.85.

The record consists of the complaint, departmental report, amended complaint, transcript of evidence taken on May 24, 1950, claimant's Exhibits Nos. 1 to 3, inclusive, motion of claimant to introduce additional testimony, order of Chief Justice of this Court granting motion of claimant, transcript of evidence taken on August 1, 1950, transcript of evidence taken on August 17, 1950, abstract of record, and statement, brief and argument of claimant.

At the time of the accident, which resulted in claimant's injury, the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State. Although a question was raised by respondent as to notice of the injury, we find that the Department had very definite notice of the accident, and claim for compensation was made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

Claimant's earnings in the year preceding the injury were approximately $2,400.00. The claimant had no children under 18 years of age dependent upon her for support at the time of the accident. The claimant was paid for the period of June 24, 1949 to July 15, 1949 in the amount of $136.50.

In view of the fact that claimant has failed to take the test that Dr. Norris recommended, there is no positive proof of an injury to the back that would warrant the payment of compensation. In the event proof was made, claimant would still have to prove the differential in

earnings before and after the accident under Section 8 (d) of the Workmen's Compensation Act.

The record shows, however, that there is proof that the injury to the back has resulted in impaired use of the left leg. She states that the leg was numb a considerable part of the time, and that she was unable to handle it properly, and that on occasions had great difficulty in walking and standing. This is also verified by the report of Dr. Norris. After reviewing the record, and from the observations of 'the movements of claimant by Henry S. Wise, Commissioner of this Court, we are of the opinion that claimant has a 25 per cent loss of use of her left leg. Claimant's compensation rate is the maximum of $15.00 per week. Since the injury occurred subsequent to July 1, 1947, this must be increased 30 per cent, making a compensation rate of $19.50 per week.

The claimant, Hazel Flowers, is entitled to an award of 47½ weeks for a 25 per cent partial permanent loss of use of her left leg. The evidence further discloses that claimant sustained temporary total disability for 31 5/7 weeks from June 24, 1949 to February 1, 1950, making a total sum due of $1,544.70. Claimant was paid the sum of $136.50 for the period of June 24, 1949 to July 15, 1949, for unproductive time, leaving a net award of $1,408.20.

An award is, therefore, entered in favor of claimant, Hazel Flowers, in the sum of $1,408.20, all of which has accrued and is payable forthwith.

Dr. H. V. Norris has submitted an additional statement, which is unpaid, in the amount of $61.15 for his professional services rendered to claimant, for which he is entitled to payment.

An award is, therefore, hereby entered in favor of

Dr. H. V. Norris in the amount of **$61.15,** payable forthwith.

The record discloses that Harry L. Livingstone has filed a bill amounting to the sum of **$131.50,** and Hugo Antonacci has filed two bills, one for $22.00 and the other for $24.00, making a total of $46.00 due Mr. Antonacci for the taking and transcribing of the evidence at the several hearings in this cause. We find these charges are fair, reasonable and just, and should be allowed.

An award is hereby entered in favor of Harry L. Livingstone in the sum of **$131.50,** and an award is hereby entered in favor of Hugo Antonacci in the sum of $46.00, all payable forthwith.

These awards are subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4317—Claim denied.)

ORVAL MOUNCE, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

***Opinion filed April 10,* 1951.**

MAX G. GULO AND WILLIAM D. JOHNSON, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; **WILLIAM H. SUMPTER,** Assistant Attorney General, for Respondent.

NEGLIGENCE—*when* ***claim is denied because claimant was guilty of contributory negligence.*** Where claimant alleges that an icy condition on a State road caused him to have an accident, but the evidence showed that claimant had passed the icy spot twice before during the same day, and thus that the claimant had knowledge of such condition, Court held that even though the State might have been negligent, claimant would be denied an award because, as a matter of law, claimant's acts under the circumstances amounted to contributory negligence. Court cited ***Dee*** v. ***City,*** 343 Ill. 36, 41, which states: "It has long been the rule in this State that it is the duty of persons about to cross a dangerous place to approach it with care commensurate with the known danger, and when one on a public highway fails to use ordinary precaution while driving over a dangerous place, such conduct is by the general knowledge and experience of mankind condemned as negligence."

to his person and property from respondent for its alleged negligence in allowing a patch of ice to accumulate on one of the State Highways under its jurisdiction, as *a* result of which the accident out of which this case arises was caused.

On December 25, 1949, at approximately one o'clock A.M., claimant was driving his car in an easterly direction on Illinois State Route No. 17 in Livingston County at a point approximately four miles southeast of Streator, Illinois, and approached the bridge over the Vermilion River in the south lane, when his car skidded on ice in said lane and crashed into the bridge with the subsequent damages.

The evidence in this case discloses that claimant lived a short distance east of the scene of the accident, and that he traveled over this road several times a day; that on the afternoon of December 24, 1949, at approximately one or two o'clock P.M. he traveled across the scene of the accident, at which time there was ice on the highway, although it was melting; that at approximately eleven o'clock P.M. he traveled from his home to Streator, and at that time the south half of the highway was covered with ice, and that claimant knew it was freezing. It was while he was returning from this second trip that the accident occurred at approximately one o'clock A.M. on the morning of December 25, 1949.

Claimant testified that he was driving forty to fifty miles per hour; that he had passed a car some distance west of the scene of the accident, and that at the time of the accident there was no car approaching from the east, and that he had his lights on dim. His neighbor, Ralph Goddard, testified that the road was clear early

in the afternoon, but that at approximately 11:30 P.M. on December 24th the road was covered with ice.

No matter what we might conclude as to the negligence of respondent in knowingly permitting the icy condition in the south lane of said highway to accumulate and remain unmarked and uncindered, we feel compelled to hold that claimant was himself guilty of contributory negligence. He is, therefore, not entitled to a recovery.

In *Duffie* v. *State*, No. **4159,** and *Hukill* v. *State*, **4160,** consolidated opinion filed October 10, **1949,** we held that the claimants therein were guilty of contributory negligence in approaching a known place of danger, to-wit: an extended gap in the concrete highway pavement, without care commensurate with such known danger, and we said:

"It has long been the rule in this State that it is the duty of persons about to cross a dangerous place *to* approach it with care commensurate with the known danger, and when one on a public highway fails to use ordinary precaution while driving over a dangerous place, such conduct is by the general knowledge and experience of mankind condemned as negligence. ***Dee* v. *City* of *Peru,*** 343 Ill. **36,** 41."

What we said in the *Duffie* and *Hukill* opinion applies to this case, and, following such opinion, we must deny an award.

Award to claimant denied.

(No. 4333—Claimant awarded **$687.67.)**

INEZ OPAL **SMITH,** Claimant, ***vs.*** STATE OF ILLINOIS, Respondent.

Opinion filed April 10, 1951.

THOMSON AND THOMSON, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. **ARTHUR. NEBEL,** Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where an employee of the Jacksonville State Hospital, Division of Public Welfare, while working at the Hospital, had an accident, which resulted in the loss of use of the entire middle finger of her right hand, Court held she was entitled to an award under the Act.

DELANEY, J.

On March 12, 1950, claimant, Inez Opal Smith, while employed as an institutional worker at the Jacksonville State Hospital, Division of Public Welfare, suffered a fracture of the second or middle finger of her right hand near the proximal end of the proximal phalanx, when the lid of **a** pasteurizer she was washing fell on her finger.

At the time of the accident the employer and employee were operating under the provisions of the Workmen's Compensation Act of this State, and notice of the accident, and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment. Hospital, medical and surgical care have been furnished by the respondent.

The record consists of the complaint, departmental report and stipulation waiving briefs of both parties.,

The claimant was treated by Dr. Lucas and Dr. F. A. Causey, physicians employed by the respondent. On April **2,** 1950 Dr. Ellsworth Black, family physician of claimant, was employed to treat the claimant. When the claimant returned to work on May **1,** 1950, she had no flexion of the two distal points of the middle or second finger of the right hand. Mrs. Smith claims loss of the third and fourth finger of the right hand, however, Dr. Black testified that there was no anatomical defects of those two fingers, and the Court feels that, as to the third and fourth fingers, it is a hysterical affair and not true paralysis.

From the medical testimony, and a close review. **of**

the record, we are of the opinion that claimant has suffered the loss of use of the entire second or middle finger of her right hand.

The claimant had no children under 18 years of age dependent upon her for support at the time of her injury, and the year preceding the injury she earned the sum of $2,244.00. Claimant's compensation rate would, therefore, be the maximum of $15.00; since the injury occurred subsequent. to July 1, 1949, this must be increased 50 per cent, making a compensation rate of $22.50 per week. Claimant is thus entitled to an award of 35 weeks at $22.50 per week or $787.50. In addition thereto, she should receive the sum of $22.50 per week for temporary total disability from March 13, 1950 to and including May 1, 1950, or a total of 7 weeks, or the sum of $157.50. Claimant was paid the sum of $257.33 as salary during her period of temporary disability, or an overpayment for non-productive time of $99.83, which must be deducted from her award, leaving a total award due of $687.67.

An award is, therefore, entered in favor of claimant, Inez Opal Smith, in the amount of $687.67, all of which has accrued and is payable forthwith.

Margaret Eagan was employed to take and transcribe the evidence at a hearing before Commissioner Summers. Charges in the amount of $15.75 were incurred for these services, which charges are fair, reasonable and customary.

An award is, therefore, entered in favor of Margaret Eagan in the amount of $15.75, which is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4345—Claimant awarded $635.84.)

JASPER JAYNE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion ***filed April 10,*** 1951.

GEORGE W. KASSERMAN, JR., Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* ***an award will*** be ***made under.*** Where **a** maintenance equipment operator of the Division of Highways of the State of Illinois, while crushing rock during the course of his employment, injured his hand, which resulted in a 30 per cent loss of use of his right second finger and a 50 per cent loss of right ring finger, Court held he was entitled to an award under Section 8 of the Act.

DELANEY, J.

Caimant filed his claim on September 28, 1950 for com'pensation under the Workmen's Compensation Act, for an injury which he suffered on November 15, **1949,** while employed by respondent.

He was employed by respondent in the Department of Public Works and Buildings, Division of Highways, as a maintenance equipment operator. On November 15, 1949 Mr. Jayne was one of a group of men engaged in crushing concrete, which was removed from the pavement of U.S. Route 45. The rock crusher was located on the right of way of U.S. **45,** two miles northeast of Neoga, in Cumberland County. At approximately **3**:00 P.M. that afternoon, Mr. Jayne's right second finger and right ring finger were crushed.

Commissioner Henry S. Wise observed from an examination of claimant's right hand that the right ring finger shows an amputation of about one-third of **a** distal phalanx, with the finger being somewhat shorter than the ring finger on the left hand, and that the right second finger is somewhat crooked, and that claimant stated that there is a numbness on both the right ring finger

and the right second finger. Claimant is unable to flex the two fingers into a tight fist, and states that there is some disability in his ability to use his hand and fingers. Commissioner Wise further observed the bone in the right ring finger does not have sufficient flesh covering the end of same, and that the bone can be felt at the end of the finger. There seems to be a discrepancy in the facts as to just how the accident occurred, but this will not affect the determination of the Court in this cause.

The record consists of the complaint, departmental report, entry of appearance of George W. Kasserman, Jr. as counsel for claimant, and withdrawal of Dale Wilson as attorney, and stipulation waiving briefs of both parties.

At the time of the accident, in which the claimant, Jasper Jayne, was injured, employer and employee were operating under the provisions of the Workmen's Compensation Act of this State. Notice of the accident, and claim for compensation were made within the time provided by the Act. The accident arose out of and in the course of claimant's employment.

Claimant had seven children under **18** years of age depending upon him for support. He was first employed on March **14, 1949** at a salary of **$187.00** a month. On July **1, 1949** his salary was increased to $225.00 a month. Salary payments from the Division to Mr. Jayne from March **14, 1949** to November **15, 1949,** inclusive, totaled $1,682.08. His compensation rate, therefore, would be the maximum of **$15.00** per week. However, as the injury occurred after July **1, 1949,** this must be increased 50 per cent, and under Section 8, (j) (3) his compensation rate would be $30.00 per week.

Claimant was totally disabled because of his injury from November **16** to December **14, 1949,** inclusive. He

was paid full salary from November **16** to December **2,** 1949, inclusive, in the amount of $127.02. He was paid compensation at the rate of $30.00 a week from December 3 to 14,1949, inclusive, in the amount of $51.43. Payments for all loss of time due to the injury totaled, $178.45.

Claimant is entitled to an award for 30 per cent loss of use of his right second-finger under Section 8, Par. (e); this would be 10½ weeks. Claimant is also entitled to an award for a 50 per cent loss of the right ring finger,. under the same section, which would be 12½ weeks, making: a total for both fingers of **23** weeks at $30.00 per week or $690.00. Claimant is entitled to **4** 1/7 weeks temporary total disability in the amount of $124.29; and as claimant received. the total sum of $178.45 for loss of time, the sum of $54.16 must be deducted from his award representing non-productive time, leaving an award due claimant of $635.84.

An award is, therefore, entered in favor of claimant, Jasper Jayne, in the amount of $635.84, all of which has accrued and is payable forthwith.

Neva June Matson, Court Reporter, was employed to take and, transcribe the testimony, for which she made a charge of $7.70. We find that this charge is fair, reasonable and customary.

An award is, therefore, entered in favor of Neva June Matson, in the sum of $7.70, payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees.."

(No. 4350—Claim denied.)

EMPLOYERS MUTUAL CASUALTY COMPANY, A CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 10, 1951.

ENSEL, MARTIN, JONES AND BLANCHARD, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*Section 23* demands that *compensation* paid by claimant to his injured employee either be fixed by an award *of* the Industrial Commission, or by a settlement between the parties approved by the Coinmission. Where claimant is an insurer of employer, and paid monies to an employee because of injuries sustained in accident that was caused by the negligence of the respondent, and said payment by employer to employee was neither by an award of the Industrial Commission or approved by the Industrial Commission, claimant cannot under its right of subrogation of the employer collect an award from the State.

Section 29 *of* the Act provides that the limit *of* recovery under said section shall not exceed the aggregate compensation payable under the Act. Where the coinplaint fails to show that the fixed compensation was not in excess of the amount allowed for the injuries sustained, the claimant has failed to come within the purview of Section 29, and his claim will be denied.

SCHUMAN, C. J.

Section 29 of the Compensation Act, upon which this claim is brought, provides a remedy whereby the employer, or, as in this case, the Insurer, may sue a third party for damages caused by circumstances creating a legal liability against the third party for injuries to an employee, where the injuries were not proximately caused by the negligence of the employer or his employees, and where such person, as here, was under the Compensation Act.

It is urged by respondent in its motion to dismiss that compensation was not fixed or determined.

Respondent's motion' necessarily implies, although not alleged, that Compensation should have been fixed

by an award of the Industrial Commission, **or** by a settlement between the parties approved by the Commission.

Section **23** of the Act, Sec. 160, Chapter 48, Illinois Revised Statutes, provides that no employer can waive any provisions of the Act in regard to the amount of compensation to be paid except after approval of the Commission. In construing this section, settlement contracts waiving such provisions have been held void as amounting to a lump sum settlement where not approved by the Commission, *International Coal Co.* v. *Industrial Commission,* **293,** Ill. **524.**

The complaint does not allege any settlement contract within the purview of the act so as to show that the employee did not waive any of his rights to have the same reviewed by the Industrial Commission; and that there was an admission by the employer, or a determination by the Industrial Commission that the disability for which the employee claims compensation arose out of an accident under the Act. For this reason we hold the complaint insufficient.

The Court has considered the case of *The Tribune Co.* v. *Emery Motor Livery* Co., **232** Ill. App. 309, which case was reserved by the Appellate Court, and remanded for a new trial to the Trial Court, and a motion to dismiss was sustained on the second trial, but reversed by the Appellate Court, and remanded with directions to assess damages at the sum of compensation payments made prior to the institution of the suit. Case was again appealed and affirmed, and was taken on certiorari to the Supreme Court, and appears in **338** Ill. **537.** The Tribune Case, **232** Ill. App. 309, was predicated upon the theory that there would have to be an agreement between the employer and employee, or an award, in order that the limit of the amount to be recovered could be

determined. The case was reversed for this determination.

All of the cases provide that the limit of recovery under Section 29 shall not exceed the aggregate compensation payable under the Act.

Bower v. *Ruseto* & Co., 306 Ill. 602, on page 608, held :

"Under the decisions of this Court, the employer may immediately, when the compensation is fixed, bring his suit under Section 29 to recover the damages sustained in an amount not exceeding the aggregate amount of compensation payable under this Act by reason of the injury to the employee."

In Angerstein "The Employer and the Workmen's Compensation Act of Illinois, Section 631 of the 1930 revision, speaking of section 29, said.:

"It is not entirely clear as to what constitutes the fixing of a compensation liability. However, an award would be sufficient, and in all probability a settlement or lump sum settlement approved by the Commission would be sufficient."

The complaint fails to show the requisite agreement, and the very essential fact that the fixed compensation was not in excess of the amount allowed for the injuries sustained.

For these reasons assigned, the motion to dismiss is allowed.

(No. 4357—Claimant awarded $878.32.)

MURREL S. HAIRE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 10, 1951.

MURREL S. HAIRE, Claimant, pro se.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an* award will *be* made under. When an employee of the Division of Highways, while working as a highway section man, sustained injuries when attempting to repair a sickle bar of a

power mower, which resulted in the loss of use of the entire right first finger, Court held he was entitled to an award under Section 8 (e) of the Act.

DELANEY, J.

On August 9, 1950, the claimant, Murrel S. Haire, employed by the respondent as a highway section man in the Department of Public Works and Buildings, Division of Highways, while repairing a sickle bar of a power mower, caught his right index or first finger in the moving sickle, and severed it at the proximal phalanx. Claimant picked up the sickle bar to clean vegetation clippings from the ledger plates. The motor was running, but the clutch to the drive shaft of the sickle was disengaged. Apparently, the disengagement was not complete because the sickle moved as Mr. Haire picked up the bar.

Immediately after the accident Mr. Haire went to Dr. K. J. Malmberg at Auburn for treatment, and reported the accident to his superior. Dr. Malmberg rendered first aid, and sent Mr. Haire to Dr. A. M. Lindsay at Springfield, Illinois, for repair of the traumatic amputation.

Incorporated in the record herein is a diagram drawn by Dr. Lindsay. On this diagram Dr. Lindsay drew a line which indicates that Mr. Haire's right index finger was removed at a point which would leave approximately one-third of the proximal phalanx.

No jurisdictional questions are raised. Both claimant and respondent were operating under the Workmen's Compensation Act.

The record consists of the complaint, departmental report and transcript of evidence.

Claimant has no children under 18 years of age dependent on him for support. His earnings in the year preceding his injury totaled $2,688.00. Mr. Haire was totally disabled because of his injury from August 10

to 13, 1950, inclusive. He mas paid full salary in lieu of compensation for the period of total temporary disability in the amount of $21.68. Claimant was not temporarily totally incapacitated for more than six working days, so we do not have to consider temporary total incapacity in this cause, Section 8 (b) of the Workmen's Compensation Act. All hospital and doctor bills have been paid by respondent.

In reviewing the record of the report of Dr. Lindsay, and from an examination of the Commissioner of the Court, it indicates that claimant has suffered a loss of use of the entire right index or first finger.

Section 8, Paragraph (e) of the Workmen's Compensation Act provides for loss of the index or first finger, or the permanent and complete loss of its use, 50 per cent of the average weekly wage during 40 weeks. The compensation rate is, therefore, the maximum of $15.00; since the injury occurred subsequent to July 1, 1949, this must be increased 50 per cent, making a compensation rate of $22.50. The claimant is entitled to an award of $22.50 per week for a period of 40 weeks, or the sum of $900.00. From this award must be deducted the sum of $21.68 for non-productive time, leaving a total award of $878.32.

An award is, therefore, entered in favor of the claimant, Murrel S. Haire, in the amount of $878.32, payable as follows:

$781.05, which has accrued as of April 10, 1951, is payable forthwith;
$ 97.27, payable in weekly installments of $22.50, beginning April 17, 1951, for a period of 4 weeks with a final payment of $7.27.

Hugo Antonacci, Court Reporter, was employed to take and transcribe the evidence in this case and has rendered a bill in the amount of $8.30. The Court finds

that the amount charged is fair, reasonable and customary.

An award is, therefore, entered in favor of Hugo Antonacci, for taking and transcribing the testimony in this case in the amount of $8.30, payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4376—Claimant awarded $311.73.)

DELBERT R. LEWIS, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion *filed April 10, 1951.*

DELBERT R. LEWIS, Claimant, pro se.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award will be made under. Where a maintenance equipment operator of the Division of Highways was injured while operating a self-propelled loader, which resulted in a 50 per cent loss of use of the middle finger of the right hand, Court held he was entitled to an award under the Act.

SCHUMAN, C. J.

Complaint was filed on December 20, 1950, by Delbert R. Lewis for an award under the Compensation Act for specific loss of use of the middle finger of the right hand.

Claimant is a married man, living with his wife, but has no children.

On August 21, 1950, claimant, while in the employ of the Division of Highways as a maintenance equipment operator at $225.00 a month, was operating a self-propelled end loader on U. S. Route 66, about two miles northeast of Pontiac. In operating the loader he placed his right hand in the push-bar slot, which released, caus-

ing an injury to the middle finger of his right hand requiring an amputation of the terminal phalanx.

No jurisdictional questions are involved. Claimant's earnings during the year preceding the accident were $2,700.00. The facts were stipulated.

On the basis of this record we make the following award:

For the permanent partial specific loss of use of the middle finger of the right hand, an amount of **50** per cent of loss of use, making an award of **17½** weeks at **$22.50** per week **for** a total of **$393.75.** From this sum will be deducted the sum of **$82.02** for non-productive time, making a net award of **$311.73,** all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor, as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4400—Claimant awarded **$366.11.)**

SINCLAIR REFINING COMPANY, A MAINE CORPORATION, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion fled April 10, ***1951.***

D. K. MCINTOSH **AND** JULIUS **F.** TREFZ, Attorneys for Claimant.

IVAN A, **ELLIOTT,** Attorney General; **WILLIAM** H. SUMPTER, Assistant Attorney General, for Respondent.

MATERIALS AND SUPPLIES—***regularly purchased and received by the Division of Highways of the State of Illinois allowed for at the price contracted, where the appropriation therefor had lapsed.*** Where the claimant furnished gasoline to the Division of Highways of the State of Illinois, the purchase of which was duly authorized, and has not received payment because of a lapse of appropriations, Court held that claimant was entitled to an award.

SCHUMAN, C. J.

Claimant, Sinclair Refining Company, **a** corporation, on various dates during periods from July **10, 1948** through June **30, 1949,** furnished gasoline to the .Division

of Highways of the State of Illinois in the usual course of business in the amount of **$284.97.**

Claimant also furnished gasoline in the same manner to the Division of Waterways of the State of Illinois in the amount of $81.14.

It is agreed all of the gasoline was furnished, but payment was refused because of lapse of appropriations.

It has been repeatedly held by this Court that under the factual situation presented, an award for the amount may be made.

An award is, therefore, entered in favor of claimant in the amount of $366.11.

(No. 4305—Claimant awarded **$5,307.40.)**

RALPH J. HEFFERNAN, ADMR., ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion fled April 10, 1951.

Petition** of **Respondent for rehearing denied May 8, 1951.

MICHAEL F. RYAN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

CIVIL ***SERVICE—Where employee illegally discharged is entitled to compensation.*** A civil service employee, illegally discharged and subsequently restored to her position by judgment of a Court of competent jurisdiction, is entitled to the salary provided for said position for the period of the illegal discharge, where she is ready, able and willing to perform the duties of such position and tendered services to her employer.

SCHUMAN, C. J.

Claim is brought by Ralph J. Heffernan, administrator of the estate of Betty Polen, deceased, to collect back salary for the unlawful discharge of the decedent from her civil service job of institution worker at the Illinois Soldiers' and Sailors' Children's School at Normal, Illi-

nois, during period from May 20, 1947, to the date of her death on February 9, 1950.

Betty E. Polen, in her lifetime, on September 2, 1947, filed her Petition for Writ of Mandamus in the Superior Court of Cook County against the Director of the Department of Public Welfare, et al; requiring that she be reinstated and reassigned as an institutional worker. The Court in that case entered a judgment requiring a writ to issue on July 8, 1949, ordering that she be reinstated, and be paid her regular salary from July 1, 1947. The defendants appealed to the Supreme Court, obtained a supersedeas, and the judgment of the Superior Court was affirmed as to her reinstatement, but reversed as to the payment of her salary. It is to be noted the notice of appeal was made on July 29, 1949, and a supersedeas allowed on August 1, 1949.

The Supreme Court, as to the salary question, held the appropriation had lapsed, and no payment could be made. It is to be noted the Supreme Court used the following language :

> "It is unfortunate there is no provision of law requiring a sequestration or setting aside of funds with which to pay a judgment entered while an appropriation was available, so that it could not be considered as lapsed pending appeal, but so long as there is no such provision, the petitioner **must** await the time such funds are made available.
>
> It was error to issue the Writ of Mandamus to pay the salary withheld, but it was proper to render a judgment that petitioner was entitled to the same."

The claimant's only recourse to collect this money was in the Court of Claims. It is apparent to this Court that the judgment of the Superior Court, affirmed by the Supreme Court, that Betty E. Polen mas entitled to the amount set forth, is a final judgment and binding on this Court.

This Court in a similar case in *Wilson* v. *State,* **12** C.C.R. 413, on page 414 held:

"Any question of the payment of claimant's salary for the period in question to some other person who may have performed the duties of his office is a matter of affirmative defense."

The State filed no pleadings in this case, and it is elementary that an affirmative defense cannot be considered under a general denial. For the reason the motion to strike the Departmental Reports is allowed, and the alleged defense thereunder is not considered. The statement of claimant as to this defense that the judgment of the Superior Court mas res adjudicata is in error. There was no enforceable judgment until the Supreme Court decision became final.

An award is, therefore, made and entered in favor of the claimant in the sum of **$5,307.40.**

(No. 4329—Claimant awarded $742.25.)

JOSEPH A. MERTEL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

***Opinion* filed May** *8, 1951.*

KEVIN D. KELLY AND HORACE W. JORDAN, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

NEGLIGENCE—*Res Ipsa Loquitur—what constitutes Res Ipsa Loquitur.* Where claimant's truck was struck and damaged by the barrier gate of a bridge, and it was shown that the gate fell because of a defective cable, Court held that upon the claimant's proof of due care and caution on his own part, the above set of facts brought the case within the doctrine of Res Ipsa Loquitur. Court stated that since the bridge was within the sole control and management of respondent, and since the claimant showed himself to have used due care and caution, in the absence of any explanation on the part of respondent, claimant had proved a prima facie case, and was entitled to an award.

SCHUMAN, C. J.

On June **9, 1950,** claimant was the owner of a truck described as a **1945** International Concrete Mixer Truck.

On the day in question, the truck was being operated by Anthony Mertel, son of claimant,, in the course of business for claimant.

While operating the truck over U. S. Highway No. 51 south across the Shippingsport 'Bridge at LaSalle, Illinois, the barrier gate at the lift span fell and struck the truck, causing damages in the amount of $742.25.

The testimony showed that the cable supporting the barrier gate broke, that it was badly worn and frayed where it broke, and that the barrier gate was of heavy fabricated steel; that the windshield on the truck was broken, that the cab of the truck was forced back against the concrete mixer, that the frame of the cab was crumpled beyond repair, that the doors of the cab were also damaged, and that the cab was damaged beyond repair.

Gordon D. Kesterson testified for the State that he was a District Maintenance Supervisor for the Division of Waterways, which position included the maintenance of lights and barriers on bridges; that he made an inspection on May 31 and June 1, 1950, and all that he found was a loose set screw, and took up slack where it had slipped; that he examined the gate after June 9, 1950 and found a broken pin in the chain, which would release the chain, slacken off the cable, and let the gate down on that end; that he reinstalled the gate, put in a new pin, and retimed the mechanism in the tower; that cables had broken eight or nine times on four bridges in a year and a half, and similar pins had broken three times in the same period.

There is no dispute in the evidence that the gate fell and struck the truck. The evidence shows the driver of the truck was in the exercise of due care and caution, and that the gate was under the sole control of respondent. The Departmental Report offered by respondent

states that the barrier gate cable broke allowing the barrier gate to fall on the cab of the truck. Claimant's testimony that the cable was broken is corroborated by the Departmental Report.

It is admitted by the respondent that the maintenance of the operating machinery of the Shippingsport Bridge was vested in the Department of Public Works and Buildings of the State of Illinois, and that by reason thereof was under sole control and management of the respondent. It is the opinion of the Court that this case falls under the doctrine of res ipsa loquitur. The doctrine of res ipsa loquitur is grounded upon the principle of law that where one has charge or management of a thing in connection with which an accident happens, which in the ordinary course of things does not happen if those who have the management thereof use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from a want of proper care. The fact of this occurrence, therefore, will be deemed to afford prima facie evidence to support recovery in absence of any explanation by the defendant attempting to show that the occurrence was not due to its want of care. There was no explanation in the record of how the accident happened, nor was there any evidence of any negligence on behalf of the claimant. There being no rebuttal to the prima facie case made by the claimant, the facts are sufficient to support an award to claimant. (*Westerfield* vs. *State of Illinois,* 18 C.C.R. at 186.)

The evidence is not disputed that the damages to the claimant's truck were in the amount of **$742.25.**

. Claimant is entitled to an award in the amount of $742.25 for damages to his truck.

An award is, therefore, entered in favor of claimant in the sum of **$742.25.**

(No. 4344—Claimant awarded $5,913.41.)

DOLLIE ARBUCKLE, WIDOW, ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion fled March 9, 1951.

Petition of Claimant for lump sum settlement denied May 8, 1951.

HOWARD S. PARKER, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ***Am—where an award will be made under.*** Where an employee of the Department of Public Works and Buildings, Division of Highways, was killed by an automobile, while in the course of his employment as a flagman for a group of highway maintenance men, the claimant, his widow, is entitled to recover an award under the Act. Section 7 of the Act applies.

DELANEY, **J.**

Dollie Arbuckle, widow of Russell V. Arbuckle, deceased, filed her complaint on September 28, 1950, for compensation under the provisions of the Workmen's Compensation Act of the State of Illinois.

The record consists of the complaint, supplemental complaint, motion of respondent to strike and dismiss supplemental complaint, notice to call up respondent's motion to strike and dismiss supplemental complaint, claimant's answer to respondent's motion to strike and dismiss supplemental complaint, departmental report, transcript of evidence, and stipulation waiving briefs of both parties.

Russell V. Arbuckle, decedent, was employed by the Department of Public Works and Buildings, Division of Highways, as a common laborer from the date of May 9, 1940 to the date of the accident. During the year preceding the accident, his total earnings were $186.79, but employees employed in a similar capacity mould work approximately two hundred (200) days a year, making the average yearly earnings of a laborer of the Highway

Section 10 of the Workmen's Compensation ,Act, Mr. Arbuckle is presumed to have earned $1,600.00 in the year preceding his injury.

On May 4, 1950 Mr. Arbuckle was acting as flagman for a group of maintenance men engaged in filling cracks in the pavement on Route U. S. 45 south of Effingham, Illinois. At approximately 1:30 P.M. on said date, Mr. Arbuckle, while acting in said capacity, was struck by a south bound automobile, and was thrown to the side of the pavement. He was taken to St. Anthony's Hospital at Effingham, where he was attended by Dr. George C. Wood. His injuries consisted of a cerebral concussion, fracture of left pubic bone, lacerations over left eye and on left eyeball; lacerations of left hand, severe contusions of entire left leg; abrasions and contusions of lower lumbar region and sacral region of back, and abrasions and contusions of entire chest wall and abdomen. Mr. Arbuckle was discharged from the hospital on May 16th, and his condition while at home continued to improve until the afternoon of May 31st when he died. Dr. Wood testified that the cause of death was "pulmonary embolism", as a result of the injuries received.

On the date of the accident decedent was 53 years old, married, and left his widow surviving, but no dependent children.

There is no jurisdictional question presented by the record, and we find that the fatal injuries to the decedent arose out of and in the course of his employment by respondent.

Compensation was paid at a rate of $22.50 a week from May 5th to May 31st, inclusive, in the total sum of $86.59. Doctor, hospital and ambulance bills were paid by the State in the amount of $288.00.

Claimant is, therefore, entitled to an award under Paragraph (a) of Section 7 of the Act, in the sum of $4,000.00, increased by 50 per cent under Paragraph (l), or a total sum of $6,000.00, which should be reduced by the payment of $86.59 compensation, as a death award is being allowed, making a net award of $5,913.41, payable at the compensation rate of $22.50 per week.

An award is, therefore, made to claimant, Dollie Arbuckle, widow, in the sum of $5,913.41, payable as follows:

$ 906.42, which has accrued, is payable forthwith;
$4,995.00, payable in weekly installments of $22.50 commencing March 16, 1951 and continuing for 222 weeks, with a final payment of $11.99.

Emma Shelton was employed to report the testimony in support of this claim and to transcribe the evidence thereof, for which she made a charge of $5.00, which we find is fair and reasonable.

A further award is entered in favor of Emma Shelton for transcribing the testimony in the sum of $5.00.

Jurisdiction of this case is specifically reserved for entry of all future orders.

The above and foregoing awards are subject to the approval of ,the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees.''

(No. 4352—Claimant awarded $303.75.)

THOMAS KEHOE, Claimant, ***vs.*** **STATE** OF **ILLINOIS,** Respondent.

*Opinion **filed** **May** **8,*** 1951.

HUGH J. **McCARTHY,** Attorney for Claimant.

IVAN A. **ELLIOTT,** Attorney General; **WILLIAM** H. **SUMPTER,** Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where a steamfitter, employed by the Department of Public Welfare, while on duty, dropped a piece of pipe on his toe, and fractured it, as a result of which he sustained a 10 per cent loss of his left foot, Court stated he was entitled to an award under Section 8 (d) of the Act.

LANSDEN, J.

Claimant, Thomas Kehoe, seeks to recover from respondent under the Workmen's Compensation Act for injuries that resulted from an accident that arose out of and in the course of his employment as a steamfitter at the Chicago State Hospital, operated by the Department of Public Welfare.

On November 10, 1949, claimant dropped a piece of pipe about three feet long on his left big toe fracturing the proximal phalange thereof. He was temporarily and totally disabled for 12 days, for which period he was paid compensation at the rate of **$22.50** per week.

No jurisdictional questions are involved, and the sole question to be determined is the nature and extent of his disability.

Claimant has a pair of bad feet. He has hammer toes on both feet, and both big toes show a marked hallux valgus or inward turning of such toes, He has flat feet, and some arthritic conditions in both feet, being somewhat more acute in his left foot at the base of his left big toe.

The medical evidence is in some conflict, but it does show that there has been some aggravation of a preexisting structural deformity in his left foot.

We conclude from the evidence that claimant has sustained a 10 per cent loss of use of his left foot due to the fracture of his left big toe. No more than such per cent of loss of use can be attributed to his accident. Any greater disability is due to structural deformity, and not his accident.

On the date of his accident, claimant was 54 years of age, a widower, and had no children under 18 years of age. His earnings in the year prior to his accident exceeded $5,000.00, and his rate of compensation is, therefore, $22.50 per week.

William J. Cleary & Co., Court Reporters, Chicago, was employed to take and transcribe the testimony before Commissioner Tearney. Charges in the amount of $51.60 were incurred, which charges are reasonable and customary. An award is entered in favor of William J. Cleary & Co. for $51.60.

An award is entered in favor of claimant, Thomas Kehoe, under Section 8 (d) (14) of the Workmen's Compensation Act for a 10 per cent loss of use of his left foot, or 13½ weeks at $22.50 per week, being the sum of **$303.75,** all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chapter 127, Section 180.

(No. 4366—Claim denied.)

JOHN M. SMITH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 8, 1951.

ANTHONY J. MANUELE, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—award must be founded upon facts and inferences reasonably drawn from facts proved by the evidence, and cannot be based upon guess or conjecture. Mt. Olive Coal Co. vs. ***Ind. Com.,*** **374** Ill. ***461.***

SAME—***degree of proof required.*** Where an employee of the Department of Agriculture sustains accidental injuries, arising out of and in the course of his employment and seeks an award therefor, he must prove his case by a preponderance of the evidence as required by **law.** This the claimant did not do, and thus he is not entitled to an award.

SAME—*same*. Disability cannot rest upon imagination, speculation or conjecture; it must be based upon facts established on objective findings, the Court cannot go outside the record to find a basis for an award.

SAME—*medical and hospital services*. Under Section *8*, Par. (a) of the Workmen's compensation Act, it is provided that the necessary medical and hospital services shall be furnished by respondent, but that the employee may at his own expense employ physicians of his own choosing. Based on the above, the Court denied the claimant an award, when it was shown that the physician and hospital were of his own choosing.

DELANEY, J.

The claimant, John M. Smith, was employed by the respondent in the Department of Agriculture as a laborer at the Illinois State Fair Grounds on August **12,** 1950. He was assigned to the sweeping crew under the direction of Mr. Ora D. Redford. Mr. Smith alleges in his complaint that at about 11:15 P.M. on the day above menticned he was standing by a truck, owned by the respondent; that when the driver started the truck a' part of the truck body hit him in the back, and that the blow turned him around and knocked him over. That after his alleged injury he had lunch at 12:00 P.M., at which time he ate a sandwich and drank a cup of coffee. He continued working until quitting time when he checked out at 6:00 A.M. Claimant alleges he became ill while traveling to his home after quitting work, and was treated by Dr. W. B. Weisbaum. Mr. Smith claims that he told Mr. Redford of the accident.

Claimant testified at the hearing in this cause that after his midnight lunch he became deathly sick to his stomach, and started vomiting blood, and from then until 6:00 A. M. he vomited blood five times. He was taken to St. John's Hospital, and was treated by Dr. Weisbaum. Claimant was hospitalized for approximately one week. Mr. Smith mas also treated in the County Hospital in Chicago when he started hemorrhaging again, and had three blood transfusions. Claimant testified that the large

valve of his heart was ruptured. The medical report submitted to the respondent by Dr. W. B. Weisbaum, which has been made a part of the departmental report filed herein, shows that the nature of the injury consisted of "soft tissue injury to left intercostal muscles and deep muscles of the back. Also injury to the left pectoral muscles. No permanent disability anticipated."

The record consists of the complaint, departmental report, amendment to complaint, and stipulation waiving briefs of both parties.

The respondent in its departmeqtal report filed herein claims it had no knowledge of the accident, and that no report was made to claimant's foreman.

Although we feel that sufficient notice was given respondent, the rule is well settled that an award, to be sustained, must be founded upon facts and inferences reasonably drawn from facts proved by the evidence, and cannot be based upon guess or conjecture. (*Mt. Olive Coal Co.* v. *Ind. Com.*, **374** Ill. 461.)

It fully appears from this record that claimant has failed to prove his case by a clear preponderance of the evidence as required by law. Mr. Smith's testimony was uncorroborated. We cannot ***go*** outside the record to find a basis for an award..

This claimant also seeks an award for hospital and doctor bills, which were of his own choosing. Section 8 (a) of the Act provides that the necessary medical and hospital services shall be furnished by the respondent, but that the employer may at his own expense employ physicians of his own choosing. We also must deny this claim.

Award denied.

Hugo Antonacci, Court Reporter, has filed a bill **for** reporting services in this case in the sum of **$36.50.** The

bill appears reasonable for the services rendered, and is hereby allowed.

An award is hereby rendered in favor of Hugo Antonacci in the sum of $36.50 payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4242—Claim denied.)

W. C. ANGEL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion *filed February* 9, *1951.*

Petition *of Claimant for* rehearing *denied June* 8, 1951.

R. W. LAMKIN AND W. F. GRAY, Attorneys. for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

NEGLIGENCE—*where claim will be denied.* Where a claimant was in a position to see from a great distance away that a truck was blocking the road, and that the clearance for the passing of traffic was very narrow, and at the same time the road was icy, his act of still attempting to pass said vehicle under said conditions at a rate of speed of between eight to ten miles an hour constituted negligence on the part of the claimant, and he was denied an award.

SCHUMAN, C. J.

This case arises out of a claim made by claimant against the State of Illinois for damages to his truck, which claimant alleges was due to the negligence of State highway employees in parking a State truck on a highway near another truck that had become mired in the mud with part of the truck on the pavement, it being the contention of claimant that the truck was parked too close, and he could not get through.

Claimant, on March 10,1949, at about 7:30 A.M., was driving his 1938 Ford Truck in a southerly direction on

Highway No. 51 at a point about three miles north of Decatur, Illinois. The place in question was near the bottom of a small hill and on an incline. The facts disclose that a semi-trailer truck owned by M. Hayes Live Fish Company of Samburg, Tennessee, was stopped with a portion of the truck out on the highway. This truck was headed south. A State truck, called a cinder spreader, was dispatched to the scene, and was driven by one Paul Blankenship, and a helper by the name of Tom Hargis was also on the truck.

There is no dispute that the pavement was icy, and the weather freezing; that two cars were ahead of claimant's truck; that claimant observed the stalled truck a quarter of a mile away, and at the time was driving 30 to 35 miles per hour.

Claimant contends that the State truck had stopped on the east side of the highway with the rear end about even with the rear end of the stalled truck; and, that, because other cars had gone through, he believed he could make it, but just at the time he started through Hargis stepped out from the rear of the State truck, and, in order to avoid hitting Hargis, claimant applied his brakes and slid into the stalled truck. Claimant testified he had slowed down to 8 to 10 miles per hour, and was about 75 feet to the rear of the second car just before starting through, and after applying his brakes skidded 4 or 5 feet before striking the stalled truck.

Blankenship and Hargis both testified that the State truck stopped only long enough to let Hargis out, and then continued on down the highway to turn around. Blankenship said he passed claimant's truck about 750 feet north of the stalled truck. Both Blankenship and Hargis stated that the State truck was not at the scene when the collision occurred.

Hargis testified that when the other cars had gone through another car was approaching from the south, and he flagged claimant on two different occasions, but claimant applied brakes too late, and the collision occurred.

There is no question from the claimant's testimony that he saw the trucks about a quarter of a mile away, but continued his speed until a short distance from the point of collision, that the pavement was icy and the weather freezing with light rain and snow. Hargis testified that the truck of claimant was sideways on the highway after the collision. It is difficult to understand that if the stalled truck was 4 feet on the pavement, and claimant's truck was 7½ feet wide, and the State truck was parked where claimant contends, and claimant did not have enough room to go through, how it was that the State truck was not involved.

Claimant's complaint only alleges that the State truck was parked too close, and he didn't have room to go through. This certainly was apparent to claimant for at least a quarter of a mile before the collision. This, together with the known condition of the road, constituted negligence on the part of the claimant, even if negligence were proven against the State. There is nothing in the complaint charging negligence of Hargis in walking from behind the State truck, which claimant contended was the reason for the application of his brakes. This alone disproved claimant's contention.

The evidence of the State was directly opposed to the testimony of claimant.

Claimant argues in his brief, and on oral argument, statutory violations, but none of these were plead. Statutory violations, if proven, would be but prima facie evidence of negligence subject to being rebutted by proof.

The Court concludes that the claimant has failed to plead, or prove the exercise of due care and caution on his part, **or** any actionable negligence on the part of the State.

For the reasons assigned above, the claim is denied.

(No. 4321—Claimant awarded $514.31.)

ANNA PILLAR, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed *June* 8, *1951.*

ROY A. **PTACIN,** Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award will be made under. Where claimant, employed as a female attendant at the Chicago State Hospital, fell on the floor when attending a patient, and suffered a chip fracture of the left lateral malleolus, Court held that she had a 20 per cent loss of use of her left foot, and that she was entitled to an award under the Act.

LANSDEN, J.

Claimant, Anna Pillar, seeks to recover from respondent under the Workmen's compensation Act for injuries to her ankle as a result of an accident that arose out of and in the course of her employment as an attendant at the Chicago State Hospital, operated by the Department of Public Welfare.

On April **29, 1950,** claimant, who was night attendant in one of the wards of such institution, was taking a patient back to bed when she slipped on the floor, sustaining a chip fracture of the left lateral malleolus.

Claimant was totally and temporarily disabled from that date until June **12, 1950,** a period of **43** days. She returned to work on June **13, 1950,** and during such period of temporary disability she was paid the sum of **$231.40** as compensation.

Since claimant's earnings in the year prior to her accident amounted to $2,260.00, and she was 54 years of age, married, but with no children under 18 years of age dependent upon her for support, her rate of compensation should have been **$22.50** per week. She should have been paid temporary disability compensation amounting to $138.21, but was paid $231.40, or an overpayment **of** $93.19.

X-Rays, taken on the date of her accident, disclosed the fracture, and also the presence of osteo-arthritis.

Claimant's doctor examined her on July 8, 1950, and again at the hearing held on December **22,** 1950. Between such dates there had been some improvement in the residual disability in her left foot, and claimant herself testified to such improvement.

From the evidence, however, it is apparent that by December 22, 1950 claimant had achieved maximum recovery from her accident, and that the remaining disability in her left foot was permanent. It is also apparent that whatever aggravation there had been to the preexisting osteo-arthritis by reason of the accident had been completely cured and relieved.

On the date of the hearing, plantar and dorsal flexion of the left foot had been reduced one-third. On pronation and supination, a limitation of one-fourth was disclosed. Some crepitus was present, but the fracture was well healed and well aligned.

To evaluate claimant's permanent disability or partial loss of use of her foot, we must keep in mind that her left ankle joint still functions, and that she has performed her duties regularly since June 13, 1950.

From the foregoing, we conclude that claimant has sustained a 20 per cent loss of use of her left foot.

William J. Cleary and Co., Court Reporters, Chi-

cago, Illinois, was employed to take and transcribe the testimony at the hearing before Commissioner Tearney. Charges in the amount of $46.95 were incurred, the same being reasonable and customary. An award is entered in favor of William J. Cleary & Co. for $46.95.

An award is, therefore, entered in favor of claimant, Anna Pillar, under Section 8 (e) **(14)** of the Workmen's Compensation Act for a 20 per cent loss of use of her left foot, being 27 weeks at $22.50 per week, or the sum of $607.50, less overpayment of $93.19 previously referred to, leaving a net award of $514.31, all of which, has accrued and is payable forthwith.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chapter 127, Section 180.

(No. 4332—Claimant awarded $123.86.)

JOE DUBINSKY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed June 8, 1951.

ARNDT AND WINGARD, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION *ACT—when an award will be made under.* Where claimant, employed as a driver's license examiner by the Department of Public Safety, had an accident when one of the parties he examined slammed a door on his elbow, causing bursitis, Court held he was entitled to an award under Section 8 of the **Act.**

SAME—*when claimant's personal physician will be paid.* Where claimant is injured while on duty, and respondent fails to cooperate with him in the manner required by law in furnishing medical service, claimant is entitled to an award to compensate him for the monies he personally paid out.

LANSDEN, J.

Claimant, Joe Dubinsky, seeks to recover from respondent under the Workmen's compensation Act for injuries sustained as a result of an accident arising out

of and in the course of his employment as a Driver's License Examiner in the Division of State Police of the Department of Public Safety.

On July 6, 1950, claimant was preparing to give a lady a driver's examination by accompanying her in her car. The driver was seated behind the steering wheel, and claimant sat at her right in the front seat. The husband of the lady slammed the right front **door,** which struck claimant's right elbow resulting in bursitis of the right elbow.

Claimant continued to work from the date of the accident until August 6, 1950, when his employment with respondent was terminated, On July 29, 1950, a doctor removed the bursae of the right elbow, and on August 17, 1950, claimant was discharged from further treatment with no disability.

The proof in the record shows that claimant notified his superiors within thirty days after the date of his accident, and no other jurisdictional questions are, or can be, involved.

Claimant maintains that he is entitled to compensation for temporary total disability for five weeks ending on August 17, 1950. The record, however, shows that until August 6,1950, he was paid his full salary for services performed by him, although he'was unable to use his arm. Claimant is, therefore, entitled to temporary total compensation only from August **7,** through August 17, inclusive, or a period of **11** days.

Claimant also maintains that he is entitled to some compensation for partial disability, but the record is wholly devoid of any proof of differential in earnings, and the uncontrovei-ted medical report in the record shows that on August 17, 1950, claimant ceased to be either totally or partially disabled,

However, claimant did pay the doctor who treated him the sum of $75.00 and he paid a hospital in Moline, Illinois, the sum of $13.50. We do not feel that he elected to secure his own medical services, since his superiors apparently did not cooperate with him in the manner required by law in furnishing medical services, and that claimant should therefore be reimbursed for the medical payments he himself has made.

On the date of his accident, claimant was **43** years of age, married, but had no children under the age of 18 years dependent upon him for support. His earnings in the year prior to his accident amounted to $2,604.00, and his rate of compensation therefore is $22.50 per week.

William J. Cleary & Co., Court Reporters, Chicago, Illinois, was employed to take and transcribe the testimony before Commissioner Tearney. Charges in the amount of $43.05 were incurred, which charges are reasonable and customary. An award is, therefore, entered in favor of William J. Cleary & Co. for $43.05.

An award is entered in favor of claimant, Joe Dubinsky, under Section 8 **(a)** (b) of the Workmen's Compensation Act for **11** days temporary total disability, or the sum of $35.36, plus $88.50 paid by him for medical services, or a total award of $123.86, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chapter 127, Section 180.

(No. 4341—Claimant awarded $1,771.87.)

LEO HALLMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 8, 1951.

HUGH J. MCCARTHY, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, employed as a painter at the Chicago State Hospital of the Department of Welfare, fell from a ladder and fractured the surgical neck of the left humerus, Court held that he had a 35 per cent loss of use of the left arm, and that under Section 8 (e) (13) of the Act he was entitled to an award.

LANSDEN, J.

Claimant, Leo Hallman, seeks to recover from respondent under the Workmen's compensation Act for the partial loss of use of his left arm, as the result of an accident that arose out of and in the course of his employment as a painter at the Chicago State Hospital, bperated by the Department of Public Welfare.

On September 26, 1949, claimant was engaged in painting a room at said institution. While descending the ladder upon which he was working, his heel caught in one of the rungs thereof, and he fell three or four feet to the floor, landing on his left shoulder, causing a fracture of the surgical neck of the left humerus.

Claimant was temporarily and totally disabled until December 5, 1949, and during the period of his temporary total disability was paid compensation at the rate of $22.50 per week.

No jurisdictional questions are involved in this case, and the sole question to be decided is the nature and extent of the disability to his left arm.

The medical and other testimony in the record discloses that there is a marked atrophy of the shoulder

muscles, and that abduction of his left arm is limited 50 per cent, as is the motion in the acromio-humeral joint. There was a grating in his shoulder, and the shoulder joint socket was loosened, although the fracture had healed smoothly and was in good alignment. There was some limitation of motion in both internal and external rotation.

Claimant also testified that he was unable to use his left arm in overhead painting, and that since his injuries his services for respondent had been confined to supervision of painting and wall cleaning jobs, although at the same rate of pay that he had been receiving on the date of his accident. There is also testimony in the record that claimant had achieved the maximum recovery from his accident, and that the residual disability was permanent.

From the foregoing, we conclude that claimant has sustained a **35** per cent loss of use of his left arm.

On the date of his accident claimant was **52** years of age, married, and had no children under the age of 18 years dependent upon him for support. His rate of pay was $2.37½ per hour, and although he had worked for respondent for less than one year, employees engaged in similar work earned far in excess of $1,560.00 per year. Claimant's rate of compensation is, therefore, **$22.50** per week.

William **J.** Cleary & Co., Court Reporters, Chicago, Illinois, was employed to take and transcribe the testimony at the hearing before Commissioner Tearney. Charges in the amount of $32.27 were incurred, the same being reasonable and customary. An award is entered in favor of William **J.** Cleary & Co. for **$32.27.**

An award is, therefore, entered in favor of claimant, Leo Hallman, under Section 8 (e) **(13) of** the Work-

men's Compensation Act for a 35 per cent loss of use of his left arm, being 78¾ weeks at $22.50 per week, or the sum of $1,771.87, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 4342—Claimant awarded $2,095.66.)

TOM F. ALLMAN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 8, 1951.

D. W. JOHNSTON AND D. R. KINDER, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, employed as a commbn laborer by the Division of Highways, was injured when a gasoline motor back-fired and the crank struck his right wrist, resulting in a traumatic synovitis, Court held that claimant was entitled to an award under Section 8 (e) of the Act for a 50 per cent loss of use of the right arm.

DELANEY, J.

The claimant, Tom F. Allman, was on June 28, 1949 employed by the respondent, in the Department of Public Works and Buildings, Division of Highways. Mr. Allman was 72 years of age, and had no children under 16 years of age dependent upon him for support. He was first employed by the Division of Highways on May 21, 1935 as a common laborer at a wage rate of 40 cents an hour. Mr. Allman worked intermittently, weather permitting and work being available, in this same classification and at the same wage rate until January 31,1941. He was not employed by the Division between January 31, 1941 and February 16,1949. On this last named date,

he was again employed as a common laborer at a wage rate of 90 cents an hour. Beginning with February 16, 1949, Mr. Allman worked continuously, weather permitting and work being available, until the date of his injury, June 28, 1949. Other Division employees, working in the same capacity as claimant, ordinarily work less than 200 days a year; therefore, under Section 10 of the Workmen's Compensation Act, claimant is presumed to have earned $1,600.00 in the year preceding the accident.

On June 28, 1949, Mr. Allman was one of a group of men assigned to the preparation of a mixture of gravel and bitumen to be used in the repair of highway surfaces. This material is prepared by mixing in a mechanical mixer definite proportions of gravel and bituminous products. At approximately 10:00 A.M. that morning, Mr. Allman was cranking the gasoline motor, which backfired, and Mr. Allman's right wrist was injured when struck by the hand crank.

Mr. Allman was sent to Dr. Ross W. Griswold, who had X-Rays taken at the St. Francis Hospital in Litchfield, and submitted the following report to the Division on June 29, 1949:

"Possible fracture of right forearm."

The Division had Mr. Allman taken to Dr. J. Albert Key and Associates, who reported as follows on September 29, 1949:

"Mr. Tom Allman was examined on the 26th of September, 1949, and has, in my opinion, a traumatic synovitis of the right wrist."

On February 24, 1950 Dr. Key and Associates reported as follows:

"Mr. Tom Allman continues to have a swollen, painful hand and wrist with limitation of motion of the fingers. Splinting of the hand and wrist relieves the pain but does not alleviate the swelling. This is a very chronic lesion which has failed to respond to anything which I have done so far. At

the time of his last visit on February 20, 1950, I removed the splint and I have requested that he come back on Friday so that I may do a stellate sympathetic block, hoping that this will improve the circulation in the hand."

Dr. Key and Associates again reported on October 23, 1950:

"Mr. Tom Allman was examined again on October 12, 1950. He continues to complain of pain in the right shoulder and in the right hand. He further complains that if he uses the hand it swells and that the grip is so weak that he is unable to pick up anything or to use it forcefully.

Examination shows the patient to have some limitation of the right shoulder because of pain. At the time there was very little swelling of the hand and very little tenderness. There is a very weak grip, however, and the patient did not make a complete fist due to limitation of flexion of the fingers.

It is my feeling that this case has now reached a permanent state and I would estimate that he had an impairment of approximately 50 per cent of the right arm. I do not believe that there is any further treatment indicated."

No jurisdictional question is raised. Respondent and claimant were operating under the Workmen's Compensation Act, and the accident arose out of and in the course of the employment. The only question is the extent of disability suffered by claimant. Respondent furnished complete medical and hospital treatment.

From the evidence and the Commissioner's observations, claimant is entitled to an award of fifty per cent (50%) loss of use of his right arm, under Section 8, Paragraph (e), of the Workmen's Compensation Act. His compensation rate, therefore, would be $15.00 per week. However, as the injury was incurred after July 1, 1947, this must be increased 30 per cent, making his compensation rate $19.50 per week for 112½ weeks or the sum of $2,193.75.

After his injury of June 28, 1949, Mr. Allman continued at light work until December 15, 1949. He was totally disabled because of this injury from December 15, 1949 to July 31, 1950, inclusive, a period of 32 5/7 weeks. He was paid compensation at the rate of $22.50 a week in the amount of $736.04. As claimant's compen-

sation rate is $19.50 per week, an overpayment of $98.09 exists.

Compensation was, terminated July 31, 1950, two days after Dr. Reynolds of Dr. Key and Associates wrote: "I feel that it would be of help in his convalescence, if he could be provided with a light job".

An award is, therefore, entered in favor of the claimant, Tom F. Allman, in the sum of $2,193.75, less the sum $98.00, overpayment for the period of temporary total disability, or the sum of $2,095.66, payable as follows:

$ 869.16 which has accrued, is payable forthwith;
$1,226.50 is payable in weekly installments of $19.50, commencing June 15, 1951 for 62 weeks, with a final payment of $17.50.

Virginia Winkleblack was employed to take and transcribe the evidence at the hearing before Commissioner Summers. Charges in the amount of $41.40 were incurred for these services, which charges are fair, reasonable and customary. An award is, therefore, entered in favor of Virginia Winkleblack, in the amount of $41.40, payable forthwith.

This award is subject to the approval of the Governor, as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4360—Claimant awarded $1,181.49.)

HARRY L. MCGUINN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 8, 1951.

THOMAS C. BRADLEY, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award *will* be made under. Where claimant, employed as a maintenance helper by the Division of Highways **of** the Department of Public Works and Buildings, injured his shoulder when he was thrown to the pavement while operating a mower being drawn by a Highway Division truck, Court held that he was entitled to an award under Section 8 (e) (13) for 30 per cent loss of use of his left arm.

LANSDEN, J.

Claimant, Harry L. McGuinn, seeks to recover from respondent under the Workmen's Compensation Act for the partial loss of use of his left arm as the result of an accident, which arose out of and in the course of his employment as a maintenance helper in the Division of Highways of the Department of Public Works and Buildings.

On June 26, 1950, claimant was riding on and operating **a** mower being drawn by a Highway Division truck. The truck and mower were proceeding in **a** westerly direction along Route 58 (Golf Road) in Cook County. The cutter bar on the mower struck an obstruction on the highway shoulder, thereby causing claimant to be thrown to the pavement, and the mower to overturn onto him.

No jurisdictional questions are involved, and claimant was temporarily and totally disabled until August 26, 1950.

On the date of his accident, claimant was 75 years of age, married, but had no children dependent upon him for support. His earnings in the ten months' period from his employment to the date of his injuries amounted to $2,587.64. His rate of compensation is, therefore, $22.50 per week.

During his period of temporary total disability he was paid the sum of $533.33 when he should have **been** paid only the sum of $196.07. He was thus overpaid in the amount of $337.26.

The medical testimony in the record is in sharp conflict, but a careful sifting thereof leads us to the conclusion that claimant has sustained a 30 per cent loss of use of his left arm.

The only medical testimony for respondent is that found in the departmental report on file herein. A doctor testified for claimant, and was subjected to a searching cross examination by counsel for respondent, about the only effect of which was to minimize slightly the extent of the traumatic arthritis from which claimant has suffered since his accident.

It is conceded that there is some limitation of rotation in his shoulder. It is also conceded that the recuperative powers of a man of the age of claimant would be considerably lessened, so that his condition takes on a permanence, which would not be expected in a man in the prime of life.

Various measurements of motion were made by the doctors, who examined claimant, and the only conclusion that we can draw from the conflicting medical testimony is that claimant's arm could be manipulated almost to the extreme limits of motion but that claimant could not voluntarily, without considerable pain, reach such limits of motion rapidly and directly.

To hold that claimant has sustained less than a 30 per cent loss of the use of his left arm would, in our opinion, deny to this elderly claimant the sympathetic interpretation of his case to which he is entitled under the Workmen's Compensation Act.

William J. Cleary & Co., Court Reporters, Chicago, Illinois, was employed to take and transcribe the testimony at the hearing before Commissioner Tearneg. Charges in the amount of $42.00 were incurred, the same

being reasonable and customary. An award is entered in favor of William J. Cleary & Co. for $42.00.

An award is, therefore, entered in favor of claimant, Harry L. McGuinn, under Section 8 (e) (13) of the Workmen's Compensation Act for a 30 per cent loss of use of his left arm, being 67½ weeks at the rate of $22.50 per week, or the sum of $1,518.75, from which should be deducted the overpayment of temporary total disability compensation hereinabove referred to in the amount of **$337.26,** leaving a net award of $1,181.49 payable as follows:

$919.29 less overpayment of $337.26 or the sum of $582.03, which has accrued and **is** payable forthwith,

$599.46 which is payable in weekly installments of $22.50 per week, commencing on June 15, 1951, for a period of 26 weeks, **plus** one final payment of $14.46.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Section 180.

(No. 4367—Claimant awarded $6,000.00.)

GRACE B. CAMMON, **WIDOW,** ET AL, Claimant, *vs.* STATE **OF** ILLINOIS, Respondent.

Opinion ***filed June 8, 1951.***

THOMAS E. KLUCZYNSKI AND THOMAS A. KEEGAN, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S *COMPENSATION ACT—when an award will be made under.* Where claimant's husband, employed as an arbitrator by the Industrial Commission, **was** killed while enroute to Staunton, Illinois, where he **was** to hear cases **as** an arbitrator, Court held that claimant, his widow, was entitled ***to*** an award under the Act.

SCHUMAN, C. J.

Claimant, Grace B. Gammon, is the widow of Clifford C. Gammon, deceased, who was employed on Octo-

ber 19, 1950, as an arbitrator for the Industrial Commission of the State of Illinois. The decedent was married to the claimant, and; at the time of the accident; was 54 years of age, and left no dependent children. His earnings for the year preceding his death were $6,276.00.

The decedent resided at Olney, Illinois, and on the date of October 19, 1950, was enroute to Staunton, Illinois, where he was to hear cases as an arbitrator. While the decedent was driving down the highway, near Breese, Illinois, he evidently lost control of his car, which overturned, and he was killed.

There are no jurisdictional questions involved, and there is no question but that this was an accident arising out of and in the course of decedent's employment.

Claimant is, therefore, entitled to an award under the Workmen's Compensation Act in the amount of $6,000.00.

An award is, therefore, made in favor of the claimant, Grace B. Cammon, in the amount of $6,000.00, which is to be paid to her as follows:

$742.50 which has accrued to June 7, 1951, and is payable forthwith;
The balance of $5,257.50 to be paid in weekly installments at the rate of $22.50 per week commencing on June 14, 1951, for a period of 233 weeks with one final payment of $15.00.

An award is also entered in favor of William J. Cleary and Company for stenographic services in the amount of $19.60, which is payable forthwith. The Court finds that the amount is a fair, reasonable and customary charge, and said claim is allowed.

All future payments being subject to the terms and conditions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

payment of compensation awards to State employees."

(No. 4371—Claimant awarded $396.15.)

GIL BOERS EQUIPMENT COMPANY, A CORPORATION, 'Claimant, *vs.* STATE OF-ILLINOIS, Respondent.

Opinion filed June 8, 1951.

HALFPENNY AND HAHN, Attorneys for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

MATERIALS AND SERVICES—*regularly purchased and received by the Division of Highways of the State of Illinois allowed for at the price contracted, where the appropriation therefor had lapsed.* Where the claimant repaired and overhauled a crane and clamshell bucket belonging to respondent, and claimant's acts were duly authorized by proper authority, and claimant has not received payment because of a lapse of appropriation, **Court** held that claimant was entitled to an award.

LANSDEN, **J.**

Claimant, Gil Boers Equipment Company, a corporation, seeks to recover from respondent the sum of $396.15 owed to claimant for services performed in connection with the repair and overhaul, during the Spring and Summer of 1949, of a crane and clamshell bucket belonging to respondent, and used by the Division of Highways from the Ottawa, Illinois, Division Headquarters.

Although claimant was engaged to make ail of the necessary repairs and replacements, such Company found it necessary to secure outside services for press, machine and casting work in the sum of $396.15.

All repairs were completed, and the equipment returned to the Division of Highways at Ottawa prior to July **1,** 1949. Claimant submitted its invoice No. **10337,** dated May 14, 1949, for $15.00, and invoice No. 10996,

dated June 1, 1949, for $836.09 in time to be paid in the regular course of business from 65th G.A. appropriations. Invoice No. 14013, dated March 29, 1950, for $396.15 covers the labor and materials sublet by elaimant. This invoice was not received by the Division of Highways until after said appropriation had lapsed.

A comparison of invoices 10337, 10996 and 14013 shows that there is no duplication of charges.

Had claimant submitted its invoice No. 14013 on or prior to September 20, 1949, the Division of Highways would have paid it in regular course. Claimant was informed by the Division of Highways that owing to the late date of billing, the only available recourse for payment was to this Court.

The appropriations from which the invoice could have been paid lapsed as of September 30, 1949. There were more than sufficient funds in said lapsed appropriations to have paid the invoice had it been presented for payment within the prescribed time.

The reason that claimant was late in submitting its invoice was that its failure to submit such invoice was not discovered until the annual audit of its books during February and March, 1950.

This Court has repeatedly held that where services, materials or supplies have been properly furnished to the State and a bill therefor has been submitted within a reasonable time, and that the same could not be approved and vouchered for payment because of the lapse of the appropriation from which it could have been paid, an award will be made for the reasonable value of the services, materials or supplies where, at the time the State became obligated, there were sufficient funds remaining unexpended in the appropriation to pay for the same. *Shell Petroleum Corp.* v. *State,* 7 C.C.R. 224; *Rock*

Island Sand and Gravel Co. v. *State, 8* C.C.R. 165; *Oak Park Hospital, Inc.* v. *State,* 11 C.C.R. 219; *Yourtee-Roberts Sand Co.* v. *State,* 14 C.C.R. 124; *Johnson* v. *State,* 16 C.C.R. 96; *Haloid* Co. v. *State,* No. 4299, opinion filed September 19, 1950; *Ernest Asphalt Sales* Co. v. *State,* No. 4331, opinion filed January 9, 1951; *Sinclair Refining* Co. v. *State,* No. 4400, opinion filed April 10, 1951.

It is conceded that the charges made by claimant are reasonable, and claimant has brought itself within the ruling of the above cited cases.

An award is, therefore, entered in favor of claimant, Gil Boers Equipment Company, for the sum of $396.15.

(No. 4374 — Claimant awarded $6,000.00.)

AGNES RELK, WIDOW, ET AL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 8, 1951.

MICHAEL J. THUMA, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMFTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*where an award will be made under.* mere an employee of the Division of Unemployment Compensation of the Department of Labor died of a heart attack, and the proof showed that it was caused by his attempting to quell a riot that occurred at the office in which he was employed, the Court held that his widow was entitled to an award under Section 7 (a) and (l) of the Act.

LANSDEN, J.

Claimant, Agnes Relk, widow of Cornelius Relk, deceased, seeks to recover from respondent under the Workmen's Compensation Act for the death of her husband in an accident that arose out of and in the course of his employment as a claims deputy in the Division of

Unemployment Compensation of the Department of Labor.

On Friday, July 28, 1950, a mass inventory layoff of employees was made by the Electro-Motive Company, Joliet, Illinois. Anticipating that there would be a large number of claims filed for unemployment compensation the following day at the Unemployment Compensation Office in Joliet, it was decided to have an augmented staff of employees of the Division of Unemployment Compensation present at the office in Joliet to handle the expected number of claims.

Therefore, decedent and three ladies undertook on Saturday, July 29, 1950, to handle the extra work load. When the office was opened at 8 o'clock in the morning, 50 or, 60 persons were already waiting to make claims. Decedent was in charge, and undertook to organize the morning's work. The applicants formed in lines to the capacity of the building where the claims were being processed, and periodically, as claims were completed, additional persons were admitted to the premises. To keep order decedent went up and down stairs several times, and on one occasion was required to deal with an intoxicated applicant who had become quite unruly.

About 10:45 **A.M.** it was decided that already inside the building were all the persons whose claims could be handled before the noon closing hour. Decedent went to the entrance of the building to inform those still on the outside that no further claims could be handled that day. One applicant attempted to strike decedent immediately after he made such announcement, and such applicant jammed his foot within the door so that decedent could not close it.

Thereupon it was necessary to call the Joliet Police Department to disperse the persons on the outside, who

by that time had become quite unruly and were milling around in front of the entrance. This being done, decedent went upstairs to his private office, and, when the three ladies assisting him had finished their morning's work, they found him slumped over the top of his desk complaining of a heart attack. The ladies took what measures they could to relieve his distress, and a doctor and the Pulmotor squad of the Joliet Fire Department were summoned, but in spite of their ministrations decedent expired.

The record discloses that decedent had been under a doctor's care for more than a year for a heart condition, which had been previously diagnosed as a posterior coronary artery occlusion, but more definitely as a moderate coronary artery insufficiency.

Two doctors testified in behalf of claimant. Both were more or less positive that the mental and physical strain through which decedent had gone during that Saturday morning contributed directly to a spasm of his coronary vessels, which resulted in his death. In other words, the excitement of the morning brought on a fatal coronary occlusion blocking the flow of blood through his, heart.

No jurisdictional questions are involved in this case. In our opinion, the foregoing facts bring this case within the rule announced in *Town* of *Cicero* v. *Industrial Commission,* **404** Ill. **487,** wherein; at pages **492-493,** the Supreme Court said:

". . . It is a well-settled rule that where an employee, in the performance of his duties and as a result thereof, is suddenly disabled, an accidental injury is sustained even though the result would not have obtained had the employee been in normal health. *(Marsh* **v.** *Industrial Corn., 386* Ill. 11; *Carson-Payson Co.* **v.** *Industrial Corn.,* 340 Ill. 632; ***Powers Storage Co.*** **v.** *Industrial Corn.,* 303 Ill. 410; *Baggot Co.* **v.** *Industrial Corn.,* 290 Ill. 530.) While it is true that where death **is** caused by organic heart trouble or other pre-existing disease, it must be shown that the disease was aggravated and

accelerated by an accidental injury sustained in the course of the employment, which accidental injury was the immediate or proximate cause of death, (*Fittro* v. *Industrial Corn.*, 377 Ill. 532), it is not necessary, in order that the injury be accidental within the meaning of the Workmen's Compensation Act, that the employee receive some external violence. *(Baggott Co.* v. *Industrial Corn.,* 290 Ill. *530.)* If a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor, his death is an accident which arises out of his employment. *Carson-Payson* Co. v. *Industrial Corn.,* 340 Ill. 632."

Claimant is, therefore, entitled to an award under Section 7 (a) (1) of the Workmen's Compensation Act.

On the date of his accident and death, claimant was 56 years of age, married, but had no children under the age of 18 years dependent upon him for support. His earnings in the year prior to his death amounted to $4,080.00, and the rate of compensation in this case is, therefore, $23.50 per week.

William J. Cleary & Co., Court Reporters, Chicago, Illinois, was employed to take and transcribe the testimony before Commissioner Wise. Charges in the amount of $118.20 were incurred, which charges are customary and reasonable. An award is entered in favor of William J. Cleary & Co. for $118.20.

An award is entered in favor of Agnes Relk, widow of Cornelius Relk, deceased, under Section 7 (a) (L) of the Workmen's Compensation Act for $6,000.00, payable as follows:

$1,006.07 which has accrued and is payable forthwith;
$4,993.93 which is payable in weekly installments of **$22.50** per week, commencing on June 15, 1951, for a period of 221 weeks, plus one final payment of **$21.43.**

Jurisdiction of this case is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 4380—Claimant awarded $765.00.)

HENRY WOOLEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion fled June 8, 1951

ROY A. PTACIN, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; WILLIAM H. SUMPTER, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, an attendant at the Chicago State Hospital, while attempting to quiet a fracas in the ward in which he was stationed, fell and fractured his wrist and hand, the Court held he was entitled to an award under the Act for a 20 per cent partial loss of the use of the right hand.

SCHUMAN, C. J.

Claimant, Henry Wooley, was employed at the Chicago State Hospital as an attendant, and worked at Ward CW-23, which was classified as a violent ward. On September 7, 1950, at about 7:30 or 8:00 P.M. a fracas occurred in the ward, and the claimant, while attending to his duties, slipped on the floor, struck his head and his right hand on a wooden bench. There are no disputes as to the fact, nor is any jurisdictional question involved. Claimant was a married man with no dependents under the age of 16 years. His yearly earnings for the year preceding his injury were $1,838.00. The only question involved is the nature and extent of the injury to his hand.

Dr. Alfred C. Field testified that he saw the claimant on December 6,1950, and took an X-Ray of the right forearm, wrist and hand. He stated that the right wrist flexion was limited about 15 degrees; extension was within normal limits. There was some crepitation present on forced manipulation. In the right hand an irregularity could be palpated in the distal end of the fifth metacarpal. There was also a fullness, which could be palpated on the palmer surface beneath the head of the fifth meta-

carpal. The fifth finger of the claimant was held in a flexed deformity, and there was a limitation of extension of about 45 degrees, and claimant was able, with difficulty, to bring it about one-quarter inch to the palm. The X-Rays disclosed the following: a fracture of the styloid process of the ulna, which is separate, well healed; a fracture in the distal end of the fifth metacarpal, which is fairly well healed; a deformity in the site of the fracture and the distal end is deviated, causing a fullness in the palmar surface of the hand. Another X-Ray, taken in a semi-oblique view, shows a deformity of the site of the fracture. This X-Ray also showed a fracture in the styloid process of the ulna, which is separated and not healed. It showed a fracture at the distal end of the fifth metacarpal, and also showed a deformity where the knob or head of the fifth metacarpal is rotated forward and deviated toward the palm of the hand. The doctor further testified that on the date of the hearing claimant still sustained some limitation of flexion in the wrist joint, and some limitation of flexion in the fifth-finger. That there was also an arthritic condition in the joint of the right wrist. The doctor further testified that the condition, as he found it, was permanent; that the claimant had sustained a functional impairment amounting to 30 per cent of the right hand.

The departmental report disclosed an examination by Dr. Julius Grueneberg of the claimant on January 15, 1951, and a copy of an X-Ray report taken on January 19, 1951. The report of Dr. Julius Grueneberg showed the following: "a slight smelling of the dorsum (back) of the right hand in the region of the distal part of the fifth metacarpal bond (the base of the small finger). The little finger of the right hand cannot be extended or flexed completely, however, limitations of mo-

tion do not exceed 15 per cent in either direction."

Doctor Grueneberg concluded from his examination that the claimant, as a consequence of the injury, had a minor degree of limitation of motion in the fifth finger of the right hand, and that the injury did not incapacitate him or prevent him from performing his present duties as attendant.

There is apparently some conflict in the testimony as to the nature and extent of the disability.

From the .evidence submitted, the Court concludes that the claimant is entitled to a **20** per cent partial loss of the use of the right hand.

On the basis of this record we make the following award:

For the permanent, partial specific loss of use of the right hand, claimant is entitled to an award of $765.00, all of which has accrued and is payable forthwith.

An award is also entered in favor of William J. Cleary and Co. for stenographic services in the amount of $46.90, which is payable forthwith. The Court finds this amount to be a fair, reasonable, and customary charge, and said claim is allowed.

This award is subject to the approval of the Governor, as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

(No. 4411—**Claimant** awarded **$450.00.)**

ULYSSES **F. GOSSAGE,** Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 8, **1951.**

ULYSSES F. **GOSSAGE,** Claimant, pro se.

IVAN A. ELLIOTT, Attorney General; **C.** ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when* an award ***will be*** made under. Where claimant, an employee of the Division of Parks and Memorials of the Department of Public Works and Buildings, caught his hand in a power mower, and thereby lost the first phalange of the left index finger, Court held he was entitled to an award under Section 8 of the Act for a 50 per cent **loss** of his left index finger.

LANSDEN, J.

Claimant, Ulysses F. Gossage, seeks to recover from respondent under the Workmen's Compensation Act for the loss of the first phalange of his left index finger in an accident that arose out of and in the course of his employment in the Division of Parks and Memorials of the Department of Public Works and Buildings.

All of the facts in this case have been stipulated, and such stipulation is hereby approved. The writer of this opinion has personally examined claimant's left index finger. No jurisdictional questions are involved.

On 'August 1, 1950, claimant was operating a power mower at Fort Massac State Park at Metropolis, Illinois. He stopped to adjust the mower, and the wrench that he was using slipped causing the index finger on his left hand to be caught in the blades of the mower. The end of his finger was shattered, and the bone was removed to the first joint.

Claimant is entitled to an award under Section 8 (e) 2, 6 of the Workmen's Compensation Act for a 50 per cent loss of his left index finger.

On the date of the accident claimant,was 47 years of age, and had no children under the age of 18 years dependent upon him for support. He had been employed by respondent only since April 1, 1950, and his rate of pay and that of other employees in the same classification exceeded the sum of $1,560.00 annually. His rate of compensation is, therefore, $22.50 per week..

Claimant worked regularly after the accident with

no loss of time, and all medical and surgical services were furnished and paid by respondent.

An award is, therefore, entered in favor of claimant, Ulysses F. Gossage, under Section 8 (e) 2, 6 of the Workmen's Compensation Act for a 50 per cent loss of his left index finger, being 20 weeks at the rate of $22.50 per week, or the sum of $450.00, all of which has accrued and is payable forthwith.

This award is subject to the approval of the Governor. Ill. Rev. Stat. 1949, Chap. 127, Sec. 180.

(No. 4414—Claimant awarded $7,500.00.)

BETTY MCCONKEY, WIDOW, ET AL, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed June 8, 1951.

BETTY MCCONKEY, WIDOW, ET AL, Claimant, pro se.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant's husband, employed as a sergeant by the Division of State Police, was killed when a motorist, whom he stopped, shot him twice, Court held that his widow was entitled to an award under the Act.

SCHUMAN, C. J.

Claimant, Betty McConkey, is the widow of Corwin McConkey, deceased, who was employed by the Division of State Police on September 21, 1941, as a highway patrolman at a salary of $275.00 a month. On February 23, 1951, he was receiving a salary of $286.00 a month as sergeant. His earnings for the year preceding his death were in the amount of $3,433.00. Mr. McConkey left surviving him his wife, Betty McConkey, claimant herein, and two children under 18 years of age.

The facts show that, while in the performance of

his duties, Mr. McConkey stopped a motorist, who had entered Routes 47 and 48 without having first come to a stop as required by law. This intersection is located somewhere north of Decatur, Illinois. While checking the motorist's driver's license, the driver of the car shot decedent twice and drove away. Mr. McConkey was taken by deluxe Trailway bus to the office of Dr. Wiley Marvel in Weldon, Illinois, who administered first aid, and then had him taken to John Warner Memorial Hospital, Clinton, Illinois, where he operated on Mr. McConkey for the repair of the intestinal wound. Mr. McConkey died as a result of his wound on March 8, 1951, at 12:40 A.M.

There are no jurisdictional questions in this case, and the case is submitted on a stipulation signed by Betty McConkey, the claimant, and the Attorney General, appearing for the respondent.

There being no dispute, claimant is entitled to an award under the Workmen's' Compensation Act in the amount of $7,500.00.

An award is, therefore, made in favor of the claimant, Betty McConkey, in the amount of $7,500.00, to be paid to her as follows:

$ 312.00 which has accrued, and is payable forthwith;
$7,188.00 which is payable in weekly installments of $24.00 per week beginning June 15, 1951, for a period of 299 weeks, with one final payment of $12.00.

All future payments being subject to the terms and provisions of the Workmen's Compensation Act of Illinois, jurisdiction of this cause is specifically reserved for the entry of such further orders as may from time to time be necessary.

This award is subject to the approval of the Governor as provided in Section 3 of "An Act concerning the payment of compensation awards to State employees."

(No. 4330—Claimant awarded $3,876.80.)

ZINGO MCNULTY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion fled February 9, 1951.

Supplemental Opinion fled July 6, 1951.

JOHN B. HARRIS, Attorney for Claimant.

IVAN A. ELLIOTT, Attorney General; C. ARTHUR NEBEL, Assistant Attorney General, for Respondent.

WORKMEN'S COMPENSATION ACT—*when an award will be made under.* Where claimant, employed as a common laborer by the Division of Highways of the State of Illinois, was struck in face by a metal sign, owned by the State, which had been hit by an automobile, and the accident resulted in the loss of sight in his right eye, Court held he was entitled to an award under the Act.

SAME—*when part of prior award will be vacated.* Where in an opinion filed February 9, 1951 in this case, the Court entered an award in the amount of $100.00 to be paid to the State Treasurer of Illinois, as ex-officio custodian of the Workmen's Compensation Special Fund, and it was later found that the money was not needed, as there was already over $50,000.00 in the Fund, the Court vacated that one portion of the award made in the previous opinion.

SCHUMAN, C. J.

Claimant, Zingo McNulty, was employed by the State of Illinois as a common laborer under the Division of Highways, and while so employed on May 23, 1950, in the discharge of his duties, sustained an injury to his right eye, shoulder, and mouth by being struck with a metal sign, which had been placed on the highway near where he was working, the sign having been hit by an automobile. No jurisdictional questions are involved. Claimant was married, 57 years of age, and had four children under the age of 16 years dependent upon him for support at the time of his injury. In the year preceding his injuries he earned the sum of $1,509.20.

The particular facts as to the nature of the injuries were as follows: Claimant was cleaning out a catch basin near Second Street and St. Clair Avenue, and while so doing had placed two metal signs, one marked "Men

Working'' and the other ''Slow''. Claimant heard a car strike one of the signs, looked around, and the sign struck him in the corner of the right eye. Claimant was also struck on the right shoulder and mouth causing loss of the left front incisor tooth.

Claimant was taken to St. Mary's Hospital in East St. Louis, where he was given emergency treatment, and then went to his family physician, Dr. Earl Williams. Dr. Williams sent claimant to Dr. Nofles in St. Louis.

The Division of Highways had claimant sent to Dr. Lawrence Post, who examined claimant, and performed an operation on the right eye. The conclusion of all medical reports show claimant sustained a complete loss of sight of his right eye.

Claimant was temporarily disabled from performing any work until about November 1,1950. Respondent paid all medical bills in connection with the injury, and temporary compensation to July **31,** 1950.

The evidence shows claimant expended $6.80 in going to doctors in St. Louis. For this amount he should be reimbursed.

A bill for stenographic services, performed at the hearing, was submitted by Igatha Broach, in the amount of $28.65, which the Court finds to be reasonable.

On the basis of this record we make the following award:

For temporary total disability for the period from May 25, 1950, to October 2, 1950, a period of 18 and 5/7 weeks, in the amount of $561.44, of which $291.44 has been paid, leaving **a** balance due of $270.00, all of which has accrued and is payable forthwith.

For the specific total loss of the use of the right eye, the sum of $3,600.00 payable as follows: $540.00 for a period of 18 weeks, which has accrued to February 5, 1951. The balance of $3,060.00 to be paid in weekly installments of $30.00 per week for a period of 102 weeks beginning February 12, 1951.

An award is also entered in favor of the claimant in the amount of $6.80 for the expenses incurred by him in the treatment of his injuries.

An award of $100.00 to be paid by the respondent to the State Treasurer of the State of Illinois, as ex-officio custodian of the Workmen's Compensation Special Fund, to be distributed in accordance with the provisions of the said Workmen's Compensation Act.

An award is also made in favor of Igatha Broach for stenographic services in the amount of *$28.65,* which is payable forthwith.

This award is subject to the approval of the Governor as provided in Section **3** of "An Act concerning the payment of compensation awards to State employees."

All future payments are subject to the terms and provisions of the Workmen's Compensation Act **of** the State of Illinois.

Jurisdiction of this cause is specifically retained for the entry of such further orders as may from time to time be necessary.

SUPPLEMENTAL OPINION

It being represented to the Court that the award entered in this cause in the amount of $100.00 to be paid by the respondent to the State Treasurer of the State of Illinois, as ex-officio custodian of the Workmen's Compensation Special Fund, to be distributed in accordance with the provisions of the said Workmen's Compensation Act, is not necessary, as the balance in said fund is in excess of $50,000.00 and no further payments are required;

It is therefore ordered that the opinion in this case, wherein the following award was made:

"An award of $100.00 to be paid by the respondent to the State Treasurer of the State of Illinois, as ex-officio custodian of the Workmen's Compensation Special Fund, to be distributed in accordance with the provisions of the said Workmen's Compensation Act"

is hereby vacated, set aside, and held for naught.

CASES IN WHICH ORDERS OF DISMISSAL WERE ENTERED WITHOUT OPINION

4279 Joseph Lamontagne

4375 Chance S. Hill

4402 Fred Wilson

4322 Charles Capers

4309 Henry McRaven

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